2–9–95
Vol. 60 No. 27
Pages 7697–7884

federal register

Thursday
February 9, 1995

Briefings on How To Use the Federal Register
For information on briefings in Washington, DC, and Dallas, TX, see announcement on the inside cover of this issue.

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The seal of the National Archives and Records Administration authenticates this issue of the **Federal Register** as the official serial publication established under the Federal Register Act. 44 U.S.C. 1507 provides that the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper, 24x microfiche and as an online database through *GPO Access*, a service of the U.S. Government Printing Office. The online database is updated by 6 a.m. each day the **Federal Register** is published. The database includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward. It is available on a Wide Area Information Server (WAIS) through the Internet and via asynchronous dial-in. The annual subscription fee for a single workstation is $375. Six-month subscriptions are available for $200 and one month of access can be purchased for $35. Discounts are available for multiple-workstation subscriptions. To subscribe, Internet users should telnet to swais.access.gpo.gov and login as newuser (all lower case); no password is required. Dial-in users should use communications software and modem to call (202) 512–1661 and login as swais (all lower case); no password is required; at the second login prompt, login as newuser (all lower case); no password is required. Follow the instructions on the screen to register for a subscription for the **Federal Register** Online via *GPO Access*. For assistance, contact the *GPO Access* User Support Team by sending Internet e-mail to help@eids05.eids.gpo.gov, or a fax to (202) 512–1262, or by calling (202) 512–1530 between 7 a.m. and 5 p.m. Eastern time, Monday through Friday, except Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $494, or $544 for a combined **Federal Register**, Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the Federal Register Index and LSA is $433. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $8.00 for each issue, or $8.00 for each group of pages as actually bound; or $1.50 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA or MasterCard. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 60 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**512–1806**

Online:

Telnet swais.access.gpo.gov, login as newuser <enter>, no password <enter>; or use a modem to call (202) 512–1661, login as swais, no password <enter>, at the second login as newuser <enter>, no password <enter>.

Assistance with online subscriptions	**202–512–1530**

Single copies/back copies:

Paper or fiche	**512–1800**
Assistance with public single copies	**512–1803**

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	**523–5243**
Assistance with Federal agency subscriptions	**523–5243**

For other telephone numbers, see the Reader Aids section at the end of this issue.

THE FEDERAL REGISTER

WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

(TWO BRIEFINGS)

WHEN: February 15 at 9:00 am and 1:30 pm
WHERE: Office of the Federal Register Conference Room, 800 North Capitol Street NW., Washington, DC (3 blocks north of Union Station Metro)
RESERVATIONS: 202–523–4538

DALLAS, TX

WHEN: March 30 at 9:00 am
WHERE: Conference Room 7A23
Earle Cabell Federal Building and Courthouse
1100 Commerce Street
Dallas, TX 75242
RESERVATIONS: 1–800–366–2998

Printed on recycled paper containing 100% post consumer waste

Contents

Federal Register

Vol. 60, No. 27

Thursday, February 9, 1995

Separate Parts In This Issue

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register
Vol. 60, No. 27
Thursday, February 9, 1995

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1435

RIN 0560–AC14

Sugar and Crystalline Fructose Marketing Allotment Regulations for Fiscal Years 1992 Through 1998

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this final rule is to adopt as final, with certain changes, the interim rule published in the **Federal Register** on July 6, 1993 (58 FR 36120) and to adopt as final, without any changes, the interim rule published in the **Federal Register** on August 6, 1993 (58 FR 41995). This final rule sets forth regulations to implement the provisions of sections 359 b-j of the Agricultural Adjustment Act of 1938 (the 1938 Act), as amended, regarding marketing allotments for sugar processed from domestically produced sugarcane and sugar beets and crystalline fructose (CF) manufactured from corn, including appeal procedures, for the fiscal years 1992 through 1998.

EFFECTIVE DATE: February 8, 1995.

FOR FURTHER INFORMATION CONTACT: Robert D. Barry, Director, Sweeteners Analysis Division, Consolidated Farm Service Agency (CFSA), United States Department of Agriculture (USDA), telephone: 202–720–3391.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule is issued in conformance with Executive Order 12866. Based on information compiled by the USDA, it has been determined that this final rule:

(1) Could have an annual effect on the economy of more than $100 million;

(2) Could adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

A Final Regulatory Impact Analysis determined that marketing allotments would reduce the quantity of domestically produced sugar that could be marketed in the United States but overall raise revenues of beet and cane producers, processors, and refiners through higher prices to users. Marketing allotments would cause supply disruptions and affect sugar-producing sectors, States, and local communities in different ways depending on their particular balance of sugar supply relating to allotments and allocations.

Other than the above impacts, this rule:

(1) Would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(2) Would not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations of recipients thereof; and

(3) Would not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order 12866.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is applicable to this final rule. The Final Regulatory Impact Analysis determined that this regulation has no significant impact on a substantial number of small entities because the particular marketing allotment options considered do not affect the paperwork, reporting, or compliance burdens of the small entities in the program. The Commodity Credit Corporation (CCC) thus certifies that the rule will have no significant economic impact on a substantial number of small entities. The Final Regulatory Impact Analysis describing the options considered in developing this final rule and the impact of the implementation of each option is available on request from the above-named individual.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will not have a significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is necessary for this final rule.

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this final rule applies are: Commodity Loans and Purchases—10.051.

Paperwork Reduction Act

The information collection requirements for sugar beet and sugarcane processors and raw cane sugar refiners have been approved by the Office of Management and Budget (OMB) through March 31, 1996, and assigned OMB no. 0560–0138.

The public reporting burden for the approved collections of information is estimated to average 90 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and computing and reviewing the collection of information.

Development of information collection requirements for sugarcane growers subject to proportionate shares has not been finalized. These information requirements will be submitted to OMB for review under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 35).

Executive Order 12372 and Executive Order 12778

The program covered by this final rule is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

This final rule has been reviewed in accordance with Executive Order 12778. The provisions of this final rule preempt State law to the extent such laws are inconsistent with the provisions of this final rule. This final rule is not retroactive. Before any action may be brought regarding the provisions of this final rule, the administrative appeal rights set forth at 7 CFR part 780 must be exhausted.

Background

Title IX of the Food, Agriculture, Conservation, and Trade Act of 1990 (the 1990 Act), which was enacted on November 28, 1990, amended the 1938 Act to provide for the establishment, under certain circumstances, of marketing allotments for sugar and CF for fiscal years 1992 through 1996. Section 111 of the Food, Agriculture, Conservation, and Trade Amendments Act of 1991, which was enacted on December 13, 1991, amended several portions of the 1938 Act's marketing allotment provisions. Pub. L. 102–535, Certain Producers of Sugarcane, Provision for Equitable Treatment, which was enacted on October 27, 1992, further amended provisions pertaining to penalties for producers in Louisiana who harvest acreage in excess of proportionate shares. The Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66), which was enacted on August 10, 1993, amended section 359b of the 1938 Act by:

(1) Extending the marketing allotment provisions through fiscal year 1998,

(2) Allowing a processor of sugar beets or sugarcane to market sugar in excess of allocation in order to facilitate the exportation of such sugar,

(3) No longer counting sugar under loan as sugar marketed, and

(4) Imposing a civil penalty only if a processor knowingly violates its marketing allocation limit.

Summary of Comments

An interim rule to implement the 1938 Act's provisions for sugar marketing allotments was published July 6, 1993 (58 FR 36120) and an interim rule to implement the appeal regulations was published August 6, 1993 (58 FR 41995). Fifteen comments were received from interested persons regarding the interim regulations: four from cane industry trade associations, one from an independent sugarcane grower, three from sugar beet processing companies, two from farm bureaus, one from a sugar beet grower organization, one from a beet sugar trade association, one from a corn refining company, one signed by three members of Congress, and one from a State Commissioner of Agriculture.

Discussion of Comments

1. There were 10 comments addressing the 3-factor criteria used to establish the percentage factors for splitting the overall marketing allotment between the cane and beet sectors.

Eight comments dealt with the weights assigned each of the criteria. Four commenters wanted past marketings to be the predominant or only criterion used to establish the percentage factors. Their recommendations for weighting past marketings ranged from 66 1/3 percent to 100 percent. Three commenters endorsed CCC's use of equal weights for all three criteria. One commenter called for flexibility in setting weights.

One commenter suggested that, when establishing the percentage factors, the Secretary not use the past marketing histories of defunct processors.

One commenter urged flexibility in the definition of ''processing capacity'' in times of drought. It was suggested that processing capacity be defined as the greater of:

(1) The maximum production during the 1985–1989 crop year period, or

(2) The maximum production during the immediately preceding five crop years.

The 1938 Act requires the use of the three-factor criteria for determining the percentage factors for overall beet and cane sugar allotments (7 CFR 1435.511), State cane sugar allotments (7 CFR 1435.512), and beet and cane processor marketing allotment allocations (7 CFR 1435.513). In each of these CFR sections, the regulations state: ''Each of the three criteria * * * will be weighted equally, or as deemed appropriate by CCC for each year allotments are in effect.

CCC reaffirms its position that equal weighting for the three factors is generally appropriate for purposes of the marketing allotment statute, unless a different weighting is determined to be more appropriate for a particular fiscal year in light of the circumstances existing at such time. Equal weights were assigned to each of the three factors when allotments were instituted in FY 1993. An evaluation of the comments made and the effects of the FY 1993 allotments, and the experience gained during the administration of the allotments, confirms that such flexibility is necessary in order to avoid imposing disproportionate negative effects on a few processors, while having no effect on other processors that have also expanded production since the base period, or resulting in increased prices considerably more than necessary to achieve the objectives of the no cost price support program for sugar beets and sugarcane. CCC must carefully evaluate the weighting of the three factors in order to achieve the statutory goals of fairness, efficiency and equity in allocating market shares and to avoid causing excessive prices for consumers and industrial users of sugar. Moreover, in the abstract, it cannot be determined that differing weights would be appropriate under the conditions existing in each year in which the allotments might be imposed.

CCC also believes the definition of ''processing capacity'' should be retained. Qualifying the definition for drought opens up arguments for other crop problems, such as premature freezes, hurricane damage, flooding, disease problems, and so forth, and would require complicated determinations of relative degree of damage. Finally, the 1938 Act explicitly states that the percentage factors for establishing the overall beet and cane sugar allotments shall consider marketings of sugar during the 1985 through 1989 time period. Therefore, past marketings of recently defunct processors must be included in the calculations. Thus, the 3-factor criteria specified in the interim rule are adopted without change.

2. Nine comments were received concerning the treatment of sugar pledged for price-support loans when allotments were in effect.

The commenters were critical of defining marketing to include the pledging and repledging of sugar. These concerns were addressed by the Omnibus Budget Reconciliation Act of 1993, which amended the previous statute so that only loan forfeitures and sales may count against allocations.

Thus, §§ 1435.510, 1435.513, and 1435.528 are revised accordingly. Also, § 1435.513 is revised to require that a sale between processors to enable the purchasing processor to fulfill its allocation be reported to CCC within a week of the date of such sale. The interim rule had required that such sale be reported within 2 days. This earlier requirement resulted in an undue paperwork burden.

3. There were seven comments concerning allocations of the marketing allotments. Three comments concerned the reassignment of deficits. One commenter suggested that CCC set a specific timetable for assessing the need to reassign deficits and make the timetable known to the industry in advance. One commenter recommended reassignment of deficits after 20 days, and another after 30 days.

CCC acknowledges the need for prompt reassignment of deficits relative to marketing allocations, so as not to short the market. However, it is also important to allow deficit companies reasonable time to purchase sugar and fill the deficit. When allotments were announced during fiscal year 1993, the first reassignments were made 26 days later and related only to the cane sector. The next reassignments, which related to both the cane and beet sectors,

occurred 56 days later. The timing of the second reassignment was partially impacted by delays in some processors' monthly reporting. Because the most recent data available are crucial for determining reassignments, and CCC cannot always be assured of timely receipt of processor data, CCC can only ensure that reassignments will be made as soon and as frequently as practicable.

Thus, § 1435.514 is revised accordingly.

Two commenters called for allowances for new processors. CCC once again notes that the sugar marketing allotment provisions of the 1938 Act do not provide for special treatment for new entrants. Such processors will be unable to acquire a past marketings status but may acquire processing capacity and the ability to market sugar.

Thus, CCC rejects the recommendation.

One commenter recommended that CCC be required to publish sugar marketing allotments at least 2 months before the beginning of the fiscal year, and if readjustments are needed, they should be announced in advance of each quarter. However, the statute requires that, before the beginning of each quarter, the CCC establish, adjust, or suspend marketing allotments depending on its assessment of appropriate factors. Therefore, CCC cannot impose allotments at the beginning of each fiscal year to be subsequently adjusted or suspended as needed. Furthermore, CCC requires flexibility in the time for announcing allotments and readjustments, balancing the need for up-to-date information and analysis with the need of companies for as much advance notice as possible.

Therefore, CCC rejects the recommendation.

One commenter recommended that the allocation of a facility closing or curtailing operations be transferred along with each grower's production history to other processors in the same State, and if that State cannot fulfill the allocation, to beet processors outside the State.

CCC reiterates that under the provisions of the 1938 Act, allocations are not made on a facility basis, but rather on a processor basis. At the processor level, a plant closing would have no effect on past marketings and would reduce processing capacity after five years, if the former production by the closed facility were not offset by increased production at other facilities owned by the processor. Once a facility is shut down, CCC would have to assess whether the processor's ability to market would be affected, and if the processor were placed in a ''deficit'' due to the closure of a facility, CCC would reassign the deficit.

Thus, CCC rejects the recommendation.

4. Three commenters questioned CCC's definition of sugar in its various forms. Two commenters wanted liquid fructose derived from sucrose to be excluded from the definition of sugar. CCC continues to maintain that, based on well established definitions of sugar and sucrose, fructose from sucrose is sugar, rather than a sugar product. Sugar products which are not subject to allotment would consist of products, other than sugar, whose majority content is not sucrose or which are not suitable for human consumption. Permitting liquid fructose derived from sucrose to be exempt from marketing allotments would be a circumvention of the purposes of the statute.

Thus, the definition of sugar as provided in the interim rule is adopted without change.

One commenter alleged inconsistency regarding to CCC's definitions for molasses, cane syrup, liquid sugar, and edible molasses, and referred to the need to conform with U.S. Customs definitions. CCC in the interim rule adopted the Customs definition of liquid sugar but also indicated the need to distinguish among liquid sugar, cane syrup, and sugar syrup. Regarding molasses, the Customs definition refers only to high-test or invert molasses which is not molasses but actually a sugar. CCC has found no universally accepted industry definition of molasses in terms of precise content of sucrose or sucrose-equivalent of invert sugars. Edible molasses is considered a sugar, with a sucrose-solids content of approximately over 60 percent. Sugar syrup has a higher sucrose content but its precise demarcation from edible molasses is not given. Both sugars are defined by CCC, for program purposes, in terms of sucrose-solids content. However, CCC does agree that the definition of sugar syrup, as contained in the interim rule, may be further clarified by stating that it is not principally of crystalline structure.

Thus, § 1435.502 is revised accordingly.

5. Two commenters urged USDA to reconsider imposing penalties on processors who had already exceeded their allocation prior to the announcement of allotments/allocations. The Omnibus Reconciliation Act of 1993 has amended the 1938 Act to exempt processors from penalties unless they ''knowingly'' marketed sugar in excess of allocation.

Thus, § 1435.528 is revised accordingly.

6. There were four comments concerning proportionate shares to producers. One commenter wanted clarification of the circumstances under which more than the average per acre yield for the preceding five years would be utilized in determining the State's per acre yield goal. The interim rule states in § 1435.521 that the State's per-acre yield goal will be at a level not less than the State average per-acre yield for the preceding 5 years, adjusted by the State average recovery rate. However, section 359f(b)(3)(A) of the 1938 Act actually states that the State's average per-acre yield goal shall be at a level (not less than the State average per-acre yield for the preceding 5 years, as determined by the Secretary) that will ensure an adequate net return per pound to producers, taking into consideration any available production research data that the Secretary deems relevant. Section 359f(b)(3)(B) of the 1938 Act also states that the Secretary shall adjust the per acre yield goal by the average recovery rate.

Thus, § 1435.521 is revised accordingly.

Another commenter wanted CCC to require Louisiana farmers to complete acreage reporting by July 1 and inform producers by August 15 of the acreage that may be planted to meet their proportionate shares for the following crop year. However, CCC is not able to determine whether allotments will be implemented that far in advance.

Thus, CCC rejects this recommendation.

The third comment concerned a recommendation that sugarcane acreage certified with ASCS by July be immediately figured into a farm base history for marketing allotment calculations for the following fiscal year when the crop is harvested. However, the 1938 Act specifically states that the acreage base for any farm is equal to the average of the acreage planted or considered planted for harvest for sugar or seed in each of the 5 crop years preceding the fiscal years that proportionate shares will be in effect. The acreage certified in July is considered the current crop year for the fiscal year that starts on the following October 1. Thus, the 1938 Act does not permit CCC to use the July data in determining proportionate shares.

The last comment concerned a request that any reduction in acreage eligibility as a result of proportionate shares not result in any reductions in future farm base levels. Under current policy, the acreage certified in July is used for calculating a farm's acreage base,

regardless of whether allotments (and proportionate shares) are subsequently instituted.

7. There were two comments concerning reasonable ending stocks in the trigger formula for marketing allotments. One commenter said USDA should choose a method to define reasonable stocks in order to give credibility to the process by which allotments are imposed. The other commenter supported flexibility in determining reasonable carry-over stocks, but suggested USDA use a range of stocks-to-use ratios in order to remain consistent.

CCC has consistently rejected a mechanical formula for determining reasonable ending stocks, and instead depends on a comprehensive analysis of the market situation, outlook, and prices. A purely statistical ratio cannot capture the full complexity of the sugar market.

Thus, CCC rejects the recommendation.

8. Two commenters recommended that CCC allow swaps between beet and quota or domestically produced sugar to facilitate exportation of surplus sugar. The current regulations do not address this issue of ''swapping.'' Rather, this issue will have to be addressed in terms of further rulemaking i.e., a new proposed rule, followed by a comment period and final rule.

9. One commenter urged USDA to use the required monthly data submitted by the industry under section 359a of the 1938 Act for calculating all phases of allotments and allocations because these are the best data available. CCC agrees with the need to use the best available data for determining allotments and allocations. However, the rule is not changed for this comment because the data published by the World Outlook and Situation Board and the National Agricultural Statistics Service are deemed as ''official'' USDA estimates.

10. One commenter wanted the term ''U.S. Market Value'' for sugarcane to be defined as ''the daily New York No. 14 contract settlement price for the nearest month less prevailing discounts for raw sugar.''

CCC does not agree with this proposal because discounts to the No. 14 contract price vary continually over time and among the different refiners.

11. One commenter reiterated a previous contention that CF is a premium product to sugar, does not compete with sugar, and has value based on qualities lacking in sugar. The commenter wanted the calculation of CF equivalence to be revised to give CF credit for qualities that sugar does not possess. CCC maintains that if CF is a premium product to sugar, then less (not more) of CF would be equivalent to the sugar quantity of 200,000 tons. Furthermore, the price premium of CF depends not just on the inherent quality of CF relative to sugar but on transient market conditions, including variable competitive relationships among alternative sweeteners.

Thus, CCC rejects the recommendation.

12. The following comments are considered to be outside the limits of this rulemaking, or are clearly contrary to the provisions of the 1938 Act:

(1) Proportionate shares should be established for Florida independent growers,

(2) Imports of sugar from Canada should be reduced to traditional levels, and

(3) Allotments and allocations cannot be justified for fiscal 1994.

Thus, CCC does not address these matters.

13. No comments were received regarding appeal regulations published August 6, 1993 (58 FR 41995).

Thus, 7 CFR 1435.530 is adopted as provided in the interim rule.

Additional Changes

14. Two additional sections of the interim rule are revised to include the specific wording of the 1938 Act.

First, § 1435.507(a) is revised to say that CCC will make quarterly re-estimates ''no later than the beginning'' of each of the second through fourth quarters of the fiscal year, rather than ''before the beginning of each quarter''. This will bring the regulations into conformance with section 359b(2) of the 1938 Act.

Second, § 1435.520(b) is revised to say that a processor's allocation will be shared among producers in ''a fair and equitable manner which adequately reflects'' each producer's production history, rather than in ''a fair and adequate manner''. This will bring the regulations into conformance with section 359f(a) of the 1938 Act.

List of Subjects in 7 CFR Part 1435

Administrative practice and procedures, Appeals, Loan programs/agriculture, Marketing allotments, Price support programs, Reporting and recordkeeping requirements, Sugar.

Accordingly, the interim rule amending 7 CFR part 1435, which was published on August 6, 1993, (58 FR 41995) is adopted as final without any changes, and the interim rule amending 7 CFR part 1435 which was published on July 6, 1993, (58 FR 36120) is adopted as final with the following changes:

PART 1435—SUGAR

1. The authority citation for 7 CFR part 1435 continues to read as follows:

Authority: 7 U.S.C. 1359aa–1359jj, 1421, 1423, 1446g; 15 U.S.C. 714b and 714c.

2. In § 1435.500, paragraphs (a)(1) and (a)(2) are revised to read as follows:

§ 1435.500 Applicability.

(a) * * *

(1) The marketing by processors, during fiscal years 1992 through 1998, of sugar processed from domestically produced sugarcane and sugar beets;

(2) The marketing by manufacturers, during fiscal years 1992 through 1998, of crystalline fructose manufactured from corn;

* * * * *

3. In § 1435.502, the definition of ''sugar syrup'' is revised to read as follows:

§ 1435.502 Definitions.

* * * * *

Sugar syrup means a direct-consumption sugar, which is not principally of crystalline structure, that has a sucrose or sucrose-equivalent invert sugar content of less than 94 percent of the total soluble solids.

* * * * *

4. In § 1435.507, paragraph (a) introductory text is revised to read as follows:

§ 1435.507 Annual estimates and quarterly re-estimates.

(a) Before the beginning of each of the fiscal years 1993 through 1998, CCC will estimate, and no later than the beginning of each of the second through fourth quarters of such fiscal years, CCC will re-estimate, for such fiscal year:

* * * * *

5. In § 1435.510, paragraph (d) is revised to read as follows:

§ 1435.510 Adjustment of overall allotment quantity.

* * * * *

(d) If the overall allotment quantity is reduced under paragraph (a)(1) of this section and the quantity of sugar and sugar products marketed, at the time of the reduction, exceeds the processors' reduced allocation, the quantity of excess sugar or sugar products marketed will be deducted from the processor's next allocation of an allotment, if any. The exceptions provided for in § 1435.513 shall be applicable in determining whether a processor has exceeded a reduced allocation.

* * * * *

6. In § 1435.513:

A. Paragraph (f) is revised,

B. Paragraph (g) is removed, and

C. Paragraph (h) is redesignated as paragraph (g) and redesignated paragraph (g) is revised to read as follows:

§ 1435.513 Allocation of marketing allotments to processors.

* * * * *

(f) During any fiscal year in which marketing allotments are in effect and allocated to processors, the total of the quantity of sugar and sugar products marketed by a processor shall not exceed the quantity of the allocation of the allotment made to the processor.

(g) Paragraph (f) of this section shall not apply to any sale of sugar by a processor to another processor that is made to enable the purchasing processor to fulfill the purchasing processor's allocation of an allotment. Such sales shall be reported to CCC within a week of the date of any such sale.

7. In § 1435.514, paragraph (a) is revised to read as follows:

§ 1435.514 Reassignment of deficits.

(a) From time to time in each fiscal year that marketing allotments are in effect, CCC will determine whether processors of sugar beets or sugarcane will be able to market sugar covered by the portions of the allotments allocated to them. These determinations will be made giving due consideration to current inventories of sugar, estimated production of sugar, expected marketings, and any other pertinent factors. These determinations will be made as soon and as frequently as practicable.

* * * * *

8. In § 1435.520, paragraph (b) is revised to read as follows:

§ 1435.520 Sharing processors' allocations with producers.

* * * * *

(b) Whenever allocations of a marketing allotment are established or adjusted, every sugar beet processor and sugarcane processor must provide to CCC such adequate assurances as are required to ensure that the processor's allocation will be shared among producers served by the processor in a fair and equitable manner which adequately reflects each producer's production history.

* * * * *

9. In § 1435.521, paragraph (c) (1) is revised to read as follows:

§ 1435.521 Proportionate shares for producers of sugarcane.

* * * * *

(c) * * *

(1) Establish the State's per-acre yield goal at a level (not less than the average per-acre yield in the State for the preceding 5 years) that will ensure an adequate net return per pound to producers in the State, taking into consideration any available production research data considered relevant;

* * * * *

10. In § 1435.528, paragraphs (a) and (b) are revised to read as follows:

§ 1435.528 Penalties and assessments.

(a) In accordance with section 359b(d)(3) of the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. 1359bb(d)(3)), any sugar beet processor or sugarcane processor who knowingly markets sugar or sugar products in excess of the processor's allocation in violation of § 1435.513 shall be liable to CCC for a civil penalty in an amount equal to 3 times the U.S. market value, at the time the violation was committed, of that quantity of sugar involved in the violation.

(b) In accordance with section 359b(d)(3) of the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. 1359bb(d)(3)), any manufacturer of CF who knowingly markets CF in excess of the manufacturer's marketing allotment shall pay to CCC a civil penalty in an amount equal to 3 times the U.S. market value, at the time the violation was committed, of that quantity of CF involved in the violation.

* * * * *

Signed at Washington, DC, on February 2, 1995.

Grant Buntrock,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 95–3288 Filed 2–8–95; 8:45 am]

BILLING CODE 3410–05–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 330

RIN 3064–AB28

Deposit Insurance Coverage

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The FDIC is amending its deposit insurance regulations to require that: Upon request, an insured depository institution disclose in writing to depositors of employee benefit plan funds, its current Prompt Corrective Action (PCA) capital category, its capital ratios, and whether employee benefit plan deposits would be eligible for ''pass-through'' insurance coverage; upon opening an account comprised of employee benefit plan funds, an insured depository institution disclose in writing its PCA capital category, a description of the requirements for ''pass-through'' insurance coverage and whether, in the institution's judgment, the deposits are eligible for ''pass-through'' deposit insurance; and when employee benefit plan deposits placed with an insured depository institution would no longer qualify for ''pass-through'' insurance coverage, the institution disclose in writing to all existing employee benefit plan depositors within 10 business days the institution's PCA capital category and that new, rolled-over or renewed employee benefit plan deposits will not be eligible for ''pass-through'' deposit insurance coverage.

The FDIC is also making a number of technical amendments to its insurance regulations concerning commingled accounts of bankruptcy trustees, joint accounts, accounts for which an insured depository institution is acting in a fiduciary capacity, and accounts for which an insured depository institution is acting as the trustee of an irrevocable trust.

The intended effect of the final rule is to provide employee benefit plan depositors important information, not otherwise available, on ''pass-through'' deposit insurance which may be needed to prudently manage their funds. The technical amendments clarify the insurance rules involving commingled accounts of bankruptcy trustees, joint accounts, accounts for which an insured depository institution is acting in a fiduciary capacity, and accounts for which an insured depository institution is acting as the trustee of an irrevocable trust.

EFFECTIVE DATES: The amendments to 12 CFR 330.12 are effective on July 1, 1995. The amendments to 12 CFR 330.6, 330.7, 330.10 and 330.11 are effective on March 13, 1995.

FOR FURTHER INFORMATION CONTACT: Daniel M. Gautsch, Examination Specialist, Division of Supervision (202/898–6912) or Joseph A. DiNuzzo, Counsel, Legal Division (202/898–7349), Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION:

Background

In May 1993, the FDIC Board of Directors (Board) revised § 330.12 of the FDIC's regulations (12 CFR 330.12) (58 FR 29952 (May 25, 1993)) to reflect the new limitations imposed by section 311 of the Federal Deposit Insurance Corporation Improvement Act of 1991

(Pub. L. 102–242, 105 Stat. 2236) (FDICIA) on the ''pass-through'' deposit insurance provided for employee benefit accounts. (''Pass-through'' insurance means that the insurance coverage passes through to each owner/beneficiary of the applicable deposit.) As required by section 311 of FDICIA, under the revised rules, whether an employee benefit plan deposit is entitled to ''pass-through'' deposit insurance coverage is based, in part, upon the capital status of an insured depository institution at the time the deposit is accepted.

Under §§ 330.12 (a) and (b), ''pass-through'' insurance shall not be provided if, at the time an employee benefit plan deposit is accepted, the institution may not accept brokered deposits pursuant to section 29 of the FDI Act (12 U.S.C. 1831f(a)) unless, at the time the deposit is accepted: (1) The institution meets each applicable capital standard; and (2) the depositor receives a written statement from the institution indicating that such deposits are eligible for insurance coverage on a ''pass-through'' basis.[1] The written statement required under this exception must be provided each time a deposit is made or additional employee benefit plan funds are placed with the insured institution. 58 *FR* 29957 (May 25, 1993).

Section 29 of the FDI Act prohibits insured depository institutions that are ''adequately capitalized'' but have not obtained a broker deposit waiver from the FDIC and ''undercapitalized'' institutions (or institutions in lower capital categories) from accepting brokered deposits.[2] A brokered deposit is defined in § 337.6 of the FDIC's regulations (12 CFR 337.6) as any deposit that is obtained, directly or indirectly, from or through the mediation or assistance of a deposit broker.

On December 8, 1993, the FDIC published in the **Federal Register** a proposed rule (58 *FR* 64521) to impose several specific disclosure requirements upon insured depository institutions regarding the availability of ''pass-through'' insurance coverage for employee benefit plan deposits. In summary, the proposed rule would have required that: (1) Upon request (within two business days after receipt of such request), an insured depository institution provide written notice to any existing or prospective depositor of employee benefit plan funds of the institution's leverage ratio, Tier 1 risked-based capital ratio, total risk-based capital ratio, PCA capital category and whether or not, in the opinion of the institution, employee benefit plan deposits made with the institution would be entitled to ''pass-through'' insurance coverage; (2) upon the opening of any account comprised of employee benefit plan funds, an insured depository institution provide written notice to the depositor of the institution's PCA capital category and whether or not such deposits are eligible for ''pass-through'' insurance coverage; (3) within two business days after an insured depository institution's PCA capital category changes from ''well capitalized'' to ''adequately capitalized'', the institution provide written notice to all depositors of employee benefit plan funds of the institution's new PCA capital category and whether or not new, rolled-over or renewed employee benefit plan deposits would be eligible for ''pass-through'' insurance coverage; and (4) within two business days after an insured depository institution's PCA capital category changes to a category below ''adequately capitalized'', the institution provide written notice to all depositors of employee benefit plan funds indicating that new, rolled-over or renewed deposits of employee benefit plan funds made on or after the date the institution's PCA capital category changed to a category below adequately capitalized will not be eligible for ''pass-through'' insurance coverage.

The FDIC issued the proposed rule, in part, because of numerous comments it received from various sources on the difficulty of obtaining public information concerning an insured institution's capital levels and on its current PCA capital category—information necessary to determine whether employee benefit plan deposits would be eligible for ''pass-through'' insurance coverage.

Discussion of the Final Rule and Comments on the Proposed Rule

The FDIC received 67 comment letters on the proposed rule. Thirty-seven were from banks and savings associations, seventeen from bank or thrift holding companies, seven from trade associations, and six from other interested parties. Numerous suggestions and recommendations were made to revise the proposal.

Only three commenters expressed support for all aspects of the proposed rule. The majority of comments recommended various revisions to make the proposal less burdensome. Many commenters noted that most institutions presently do not have a system for identifying employee benefit plan accounts and that more time was needed to provide the required disclosures to affected depositors. They also expressed concern about the administrative cost of complying with all aspects of the proposal. Others commented that the proposed rule might create a potential liability for insured institutions and promote bank ''runs.'' Most commenters suggested that the FDIC include optional sample disclosures in the regulation.

In issuing the proposed rule for comment the FDIC was cognizant of the attendant regulatory burden that would be imposed upon insured depository institutions. Thus, the FDIC attempted to balance the undesirability of imposing additional regulatory requirements on insured depository institutions with the importance of providing timely notice to existing and prospective employee benefit plan depositors of the extent of ''pass-through'' insurance coverage available for their deposits—information which is important to them and not otherwise generally available. In response to the public comments, the FDIC has modified the requirements of the proposed rule so that the final rule has fewer and less burdensome disclosure requirements than those proposed. The remaining requirements are believed to be essential, however, to ensure that the necessary deposit insurance information is provided to employee benefit plan depositors.

In FDICIA Congress for the first time linked deposit insurance coverage to the capital level of the insured depository institution. This relationship between the scope of deposit insurance and an institution's capital applies only to employee benefit plan deposits. This special category of deposit insurance coverage, therefore, requires special disclosure rules; otherwise, employee benefit plan depositors may be inappropriately disadvantaged. Given the nature of the statutory requirements for ''pass-through'' insurance coverage for employee benefit plan accounts, the Board believes the disclosure requirements are essential to safeguard the interests of employee benefit plan depositors and ultimately plan participants. As indicated below, however, the Board acknowledges that the disclosure requirements do not fully safeguard the interests of the owners of employee benefit plan deposits and believes that amendments to the insurance provisions of the FDI Act are

[1] The recordkeeping requirements of § 330.4 of the FDIC's regulations also would have to be satisfied. 12 CFR 330.12(a) & 330.4.

[2] ''Well capitalized'' insured institutions can, in certain circumstances, avoid a lapse in eligibility for ''pass-through'' insurance of employee benefit plan deposits, should the institution's PCA capital category be reduced to ''adequately capitalized'', by obtaining a broker deposit waiver from the FDIC.

needed to remedy the continuing potential exposure of those owners.

The following is a discussion of the comments received on the various aspects of the proposed rule including comments received on the specific issues raised in the proposed rulemaking:

A. Disclosures Upon Request

The proposed rule would have required that, upon request (within two business days after receipt of such request), an insured depository institution provide written notice to any existing or prospective depositor of employee benefit plan funds of the institution's leverage ratio, Tier 1 risked-based capital ratio, total risk-based capital ratio, PCA capital category and whether, in the opinion of the institution, employee benefit plan deposits placed with the institution would be eligible for ''pass-through'' insurance coverage. A majority of the commenters that specifically addressed this issue favored this provision. They cited the need for depositors to be able to obtain adequate information in order to make an informed decision about where to invest their funds. Those opposed to such a requirement cited the regulatory burden of developing policies and procedures, automation systems, training of customer service personnel and maintaining current capital-related information to ensure compliance with the requirement. Other commenters questioned the need to disclose this capital information because, in their view, the information would confuse most individuals.

A number of commenters also questioned the requirement that institutions make disclosures to prospective employee benefit plan depositors upon request. They indicated that individuals are free to take their business elsewhere if they are not satisfied with the information received. They suggested that market forces can address this issue and recommended that this requirement be deleted from the regulation.

The FDIC agrees that prospective customers are free to take their business elsewhere if they do not get the desired information. Existing customers, however, may have several reasons why they cannot easily move their accounts. Therefore, the final rule has been changed to require disclosures when requested by employee benefit plan customers that already have accounts at an insured institution.

The FDIC believes that the regulatory burden placed on institutions can be mitigated if adequate time is given to establish policies and procedures. Accordingly, the final rule contains a delayed effective date of July 1, 1995. In addition, the capital information to be disclosed is based on the most recently available data and need not be as of the date of the deposit. The FDIC believes that insured institutions should not have to develop any new, specific procedures to develop the capital information required by this portion of the rule. For example, institutions that are clearly ''well capitalized'' and have experienced only minor variations in their capital ratios since the filing of their last quarterly Consolidated Report of Condition and Income (Call Report) may use the capital ratios calculated at that time.

An institution's capital category and the availability of ''pass-through'' insurance are, in almost all cases, believed to be derived from financial information currently available. Further, only a very few insured depository institutions are not eligible for employee benefit plan ''pass-through'' deposit insurance coverage. (Based on September 30, 1994 regulatory reporting data only 279 of 12,774 insured depository institutions were less than ''well capitalized''.) Therefore, it is estimated that the regulatory impact of this portion of the rule will be insignificant.

Some commenters recommended that depositor requests be in writing and be mailed to a central location. The FDIC believes that once procedures are developed it should be no more burdensome to honor an oral request than a written one. In addition, imposing restrictions on existing depositors that request this information would hamper the purpose of providing timely information. Therefore, the FDIC has decided that depositor requests can be made orally or in writing to designated bank employees.

B. Disclosure Upon Opening an Account

The proposed rule also would have required that, upon the opening of any employee benefit plan account, the insured depository institution provide a written notice to the depositor of the institution's PCA capital category and whether or not such deposits are eligible for ''pass-through'' insurance coverage. Commenters generally expressed support for this provision. Some, however, questioned whether disclosing capital information was meaningful to an employee benefit plan depositor.

The FDIC continues to believe that it is essential that an employee plan depositor be notified about whether ''pass-through'' coverage is available for deposits placed with a depository institution. Moreover, based on the comments received on this and related issues, the FDIC also believes that when opening an employee benefit plan account depositors should be informed (or reminded of) the basic requirements of the law and regulations regarding the availability of ''pass-through'' insurance coverage for employee benefit plan deposits. Thus, the FDIC has revised this provision of the final rule to require that the written notice provided to an employee benefit plan depositor include an accurate explanation of the requirements for ''pass-through'' deposit insurance coverage. (A sample disclosure of this information is provided below.) Therefore, the final rule retains the requirement that the written disclosure statement indicate the institution's PCA capital category and whether, in the institution's judgment, the funds being deposited are eligible for deposit insurance coverage. The sample disclosure also contains language informing employee benefit plan depositors that additional information on the institution's capital condition may be requested.

C. Timing of Disclosures

The proposed rule would have required that certain information be provided within two business days to current or prospective employee plan depositors in three different situations: (1) When an institution received a request for information from an employee benefit plan depositor; (2) when an institution's capital category changed from ''well capitalized'' to ''adequately capitalized''; and (3) when an institution's capital category fell below ''adequately capitalized''. Regardless of whether or when notice is provided to the depositor, ''pass-through'' insurance coverage on new, rolled over or renewed deposits may cease immediately upon notice to the insured depository institution that its PCA capital category has been lowered. Thus, the proposed rule requested comments on the feasibility of compliance with the two-day notification requirement and, specifically, on whether a longer time frame might increase the period for which a depositor's employee benefit plan funds would be uninsured.

Of the 42 commenters that specifically addressed the time frame requirement, 40 stated that the two-business-day period was too short. The commenters recommended extending the time requirement from the proposed period of two business days to periods of time ranging from five days to 30 days. The most common recommendation was to extend the period to 10 business days, the same

period of time as required under the Federal Reserve's Regulation DD (12 CFR part 230), which implements the Truth in Savings Act. Seven commenters recommended five business days indicating that the required disclosures could be made within five business days once policies and procedures had been established to ensure compliance with the regulation.

Based on the comments received on this issue, the Board has decided to require that the disclosures to be made upon request be made within five business days—the shortest period of time that it believes an institution could be expected to meet the time requirements. In arriving at this time period the FDIC attempted to balance the feasibility of complying with the requirement with the need for employee benefit plan depositors to know, on a timely basis, whether deposits are and will continue to be eligible for ''pass-through'' insurance coverage. Institutions are encouraged to provide the required disclosures sooner, if possible.

The five business day time frame begins upon the bank's receipt of the request and ends when the institution mails or delivers the required information to the depositor. ''Receipt'' means when an institution receives a request, not when it is received by a designated department of the institution.

Secondly, the FDIC has decided to extend to 10 business days the notification time frame when an insured institution must provide notice that new, renewed or roll-over employee benefit plan deposits placed with an institution will not be eligible for ''pass-through'' insurance coverage. The FDIC recognizes that this disclosure is more extensive than an individual request from an employee benefit plan depositor and generally will occur when an institution is experiencing financial problems. Institutions in this situation frequently have management deficiencies and weak internal controls. For these reasons, adoption of a slightly longer time frame is believed appropriate. Institutions are encouraged to provide disclosures sooner, if possible.

Despite its decision to extend the periods in which insured institutions must comply with the disclosure requirements of the final rule, the Board continues to be concerned about employee benefit plan funds that are deposited with an institution before the institution is required to notify depositors of the discontinuation of the availability of ''pass-through'' coverage on such deposits. An example would be where an institution becomes ''undercapitalized'' on Day 1 and a customer deposits employee benefit plan funds before the expiration of the 10 days within which the institution is required to notify employee benefit plan depositors that ''pass-through'' insurance will not be available for deposits placed after Day 1. Under the FDI Act and § 330.12, such deposits would not be eligible for ''pass-through'' coverage because at the time they were ''accepted'' the institution was undercapitalized—and, thus, not permitted to accept brokered deposits. The Board believes that Congress should consider amendments to the insurance provisions of the FDI Act to address this potential pitfall for employee benefit plan depositors and, particularly, the ultimate plan participants.

One commenter recommended that when an institution notifies existing employee benefit plan depositors that ''pass-through'' insurance coverage is no longer available, the affected depositors not be assessed a withdrawal penalty. This would pertain particularly to the situation where a depositor places employee benefit plan funds with an institution between the time that such deposits become ineligible for ''pass-through'' coverage and the time the institution notifies the depositor of the ineligibility of new deposits for such coverage. Because the ''pass-through'' coverage of only newly deposited funds is potentially affected by this time gap and then only if the institution fails, the FDIC has decided not to address the withdrawal penalty issue in the final rule. The institution and its employee benefit plan customers are free to negotiate this matter. The FDIC anticipates that insured institutions will waive any penalty fees in appropriate circumstances.

D. Disclosure When an Institution's PCA Capital Category Changes but ''Pass-Through'' Insurance Coverage Is Still Available

The proposed rule would have required an insured depository institution to provide a written notice to all employee benefit plan depositors when the institution's PCA capital category changed from ''well capitalized'' to ''adequately capitalized'', irrespective of whether employee benefit plan deposits still would be eligible for ''pass-through'' insurance coverage. The FDIC requested comment on whether a disclosure should be required upon such a reduction in an institution's PCA capital category but the institution had obtained a waiver from the FDIC under § 337.6 of the FDIC's regulations to accept brokered deposits, and thus, there would be no change in the availability of ''pass-through'' deposit insurance coverage for employee benefit plan deposits.

Of the 46 commenters that specifically addressed this issue, 40 were against requiring any disclosures if the availability of ''pass-through'' coverage had not changed. Commenters noted that providing disclosures would cause confusion among depositors, create an increased regulatory burden on the institution in having to explain to affected depositors why the notice was being sent even though the availability of ''pass-through'' insurance coverage had not changed, encourage disintermediation, promote financial instability within institutions, and encourage bank ''runs''. They also indicated that such a disclosure requirement would be contrary to the FDIC goals of promoting a safe and sound banking system and of limiting losses to the deposit insurance funds.

The FDIC concludes that this requirement would be an unnecessary burden and has decided to eliminate this provision from the final rule. Although a reduction in an institution's PCA capital category to ''adequately capitalized'' reflects a decline in an institution's capital level and, thus, may be helpful information for an employee benefit plan depositor, this change is only one of many factors that an employee benefit plan depositor should consider when monitoring the financial condition of an insured depository institution. In addition, the final rule requires that employee benefit plan depositors be notified if and when new, renewed or rolled-over employee benefit plan deposits will no longer be eligible for ''pass-through'' insurance coverage. Also, under the final rule, information on an institution's PCA capital category and whether ''pass-through'' coverage is available can be obtained from an institution under the ''upon request'' provision of the final rule.

E. Form of Disclosures

In the proposed rule the FDIC solicited specific comment on the form of disclosure. The five specific areas addressed were whether: (1) the required disclosures should have to be in a separate mailing; (2) a written acknowledgement from the intended recipient of the disclosure should be required; (3) the disclosure should be required to be prominent and conspicuous (for example, requiring bold type); (4) the disclosure should be part of the deposit agreement; and (5) other related information may be disclosed.

The FDIC received only a few comments on each of these areas. In general, commenters favored the option of using a separate mailing, the requirement that disclosures be ''prominent and conspicuous'', and the ability to include other related information in the disclosure—such as explaining why an institution had a capital deficiency. The respondents opposed requiring an institution to obtain a written acknowledgement from employee benefit plan depositors or requiring that the disclosures be part of the deposit agreement.

The FDIC has decided not to establish any specific forms or procedures on the required disclosures except for a general requirement that the required disclosures be ''clear and conspicuous.'' This phrase is believed to be more representative of the standard that disclosures must be in a reasonably understandable form. It does not require that disclosures be segregated from other material or located in any particular place or be in any particular type size.

Institutions may, at their discretion, use any of the above or other disclosure methods as long as it meets the ''clear-and-conspicuous'' standard and the time requirements. For example, an institution that is opening an employee benefit plan account may provide a separate written disclosure statement to the customer or reference the specific section of the deposit agreement that contains the disclosure information.

A reasonableness standard will be used when reviewing compliance with this section of the regulation. Institutions should consider the level of sophistication of a depositor when providing required disclosures to assure that they are communicated in a clear and understandable fashion. The FDIC believes that, in general, managers and administrators of employee benefit plans are more sophisticated financial persons than the average depositor.

F. Discussion of Sample Disclosures

The FDIC requested comment on whether the final rule should include a specific notice that institutions would have to provide to employee benefit plan depositors when an institution's PCA capital category changed from ''well capitalized'' to ''adequately capitalized'' or to a level below ''adequately capitalized.'' The majority of commenters specifically addressing this issue suggested that the FDIC provide sample language in the final rule but recommended that any sample disclosures be optional and that additional information be permitted to be disclosed to the employee benefit plan depositor—such as the reasons for an institution's capital deficiency. Other commenters expressed concern about the tone of the sample language included in the proposed rule while others suggested alternate language.

One commenter recommended that the FDIC also provide a sample disclosure when a depositor opens an employee benefit plan account. Other commenters suggested a disclosure that only informs the depositor whether employee benefit plan deposits would be eligible for ''pass-through'' coverage under the regulations.

Based on these comments, the FDIC has provided below two sample disclosure notices. One applies when a depositor opens an employee benefit plan account and includes a description of the requirements for ''pass-through'' insurance coverage. The other is when new, renewed or rolled-over employee benefit plan deposits would not be eligible for ''pass-through'' insurance coverage.

Additional information can be included with the disclosure as long as the overall disclosure statement meets the clear-and-conspicuous standard in the regulation. This may include, for example, additional information on an institution's capital deficiency and when, in the institution's opinion, the deficiency is expected to be corrected.

A few commenters noted that the sample disclosure statements indicate that the FDIC is not bound, in its insurance determinations, by information provided by insured institutions to depositors on the eligibility of the employee benefit plan deposits to ''pass-through'' insurance coverage. It is correct that the FDIC is not bound in its insurance determinations by information provided by an insured institution to its customers. The FDIC also is not responsible for or bound by a depository institution's failure to provide the required disclosure statements.

Although it may be helpful for an insured institution to inform employee benefit plan depositors that the FDIC is not bound by information provided by an insured institution to its customers, the Board believes the inclusion of that information in the required disclosure statements should be optional. The thrust of the disclosure requirements imposed by the final rule is to alert employee benefit plan depositors to the rules regarding ''pass-through'' insurance coverage and, in particular, to inform them when such coverage is no longer available. Requiring insured institutions to indicate whether the FDIC would be bound by incorrect information in the disclosure statements goes beyond the necessary scope of the required disclosure.

G. Separate Enforcement Provision

The FDIC requested comment on whether a free-standing enforcement and/or penalty provision should be included in the final rule. The few commenters that addressed this question requested that any sanctions imposed be limited to cases of intentional disregard or willful noncompliance and that civil money penalties should not be assessed. In the proposed rule, the FDIC indicated that violations of regulatory requirements would be subject to the full array of enforcement sanctions (including the imposition of civil monetary penalties) contained in section 8 of the FDI Act (12 U.S.C. 1818).

The FDIC has decided that separate enforcement provisions are not required to enforce the requirements of the final rule. The current provisions in section 8 of the FDI Act (12 U.S.C. 1818) are considered adequate and will be used to enforce compliance when deemed appropriate.

H. Inclusion of Information in Call Reports

The FDIC requested comment on whether the capital ratios and PCA category of an institution should be made a general disclosure requirement in, for example, quarterly Consolidated Reports of Condition and Income (Call Reports). In this way, existing and prospective employee benefit plan depositors and other interested parties would be able to obtain an official, publicly available statement of an institution which clearly indicates this important information.

Of the 15 commenters that addressed this issue, 12 favored adding the information to the Call Reports. Those in favor suggested that including this information would provide depositors with an efficient and independent means of obtaining relevant financial data on an insured institution. They also recognized that employee benefit plan administrators have a fiduciary obligation to determine the capital status of an insured institution. Two commenters also recommended that this information be disclosed on Thrift Financial Reports (TFRs). Two others suggested that this information be in lieu of the required disclosures in the proposed rule. One commenter specifically opposed any revision to the Call Report indicating that plan administrators had the sophistication to determine an institution's capital ratios and PCA capital category.

Two other commenters suggested that a ''yes/no'' box be included on the Call Report that would indicate whether ''pass-through'' coverage was available. They opined that this one disclosure would provide employee benefit plan depositors with an explicit statement on a quarterly basis on whether an institution could provide ''pass-through'' coverage and would avoid the question whether an institution classified as ''adequately capitalized'' was able to offer ''pass-through'' insurance coverage.

The FDIC does not have the authority to change the Call Report or the TFR on its own and has decided not to reach a conclusion at this time. Instead it will recommend to the Federal Financial Institutions Examination Council that it consider whether the Call Report and the TFR should be amended to include a line item for designating an institution's PCA capital category.

Although public disclosure of this information would be beneficial to the public, it also could be misleading without further information or investigation. For example, the continued availability of ''pass-through'' coverage would not be known in the case of institutions reporting an ''adequately capitalized'' condition, although this information would raise a ''red flag'' that depositors could investigate further. In addition, a Call Report disclosure is as of the date of the report and it may not reflect interim events between Call Report dates. Moreover, an institution's PCA capital category may not constitute an accurate representation of an institution's overall financial condition or future prospects—factors that employee benefit plan depositors also need to consider. Finally, it should be noted that the PCA rules do not prohibit an institution from disclosing its PCA capital category in response to inquiries from investors, depositors, or other third parties. However, such disclosures should include appropriate caveats in order to avoid misleading the public.

The FDIC considered the recommendation of including a ''yes/no'' box on the Call Report but does not favor this proposal out of a concern that the disclosure would be more prone to reporting error and would create a greater regulatory burden on institutions.

I. Definition of ''Employee Benefit Plan Depositor''

The FDIC indicated in the preamble of the proposed rule that the required information may be provided to an employee benefit plan administrator or manager instead of to each participant in a plan. One commenter recommended that the final rule define the term ''employee benefit plan depositor'' to mean managers or administrators of such plans. Thus, it would make clear that the required disclosures only need be made to the administrator or manager of an employee benefit plan and not to each individual beneficiary of the plan. The FDIC has decided to include such a definition in the final rule. The final rule also specifies that, for purposes of the requirements of the final rule, the definition of the term ''employee benefit plan'' includes eligible deferred compensation plans described in section 457 of the Internal Revenue Code (26 U.S.C. 457).

J. Sample Disclosures

1. A sample disclosure that an insured depository institution may use when a depositor opens an account consisting of employee benefit plan deposits is as follows:

Under federal law, whether an employee benefit plan deposit is entitled to per-participant (or ''pass-through'') deposit insurance coverage is based, in part, upon the capital status of the insured institution at the time each deposit is made. Specifically, ''pass-through'' coverage is not provided if, at the time an employee benefit plan deposit is accepted by an FDIC-insured bank or savings association, the institution may not accept brokered deposits under the applicable provisions of the Federal Deposit Insurance Act. Whether an institution may accept brokered deposits depends, in turn, upon the institution's capital level. If an institution's capital category is either ''well capitalized,'' or is ''adequately capitalized'' and the institution has received the necessary broker deposit waiver from the FDIC, then the institution may accept brokered deposits. If an institution is either ''adequately capitalized'' without a waiver from the FDIC or is in a capital category below ''adequately capitalized,'' then the institution may not accept brokered deposits. The FDI Act and FDIC regulations provide an exception from this general rule on the availability of ''pass-through'' insurance coverage for employee benefit plan deposits when, although an institution is not permitted to accept brokered deposits, the institution is ''adequately capitalized'' *and* the depositor receives a written statement from the institution indicating that such deposits are eligible for insurance coverage on a ''pass-through'' basis. The availability of ''pass-through'' insurance coverage for employee benefit plan deposits also is dependent upon the institution's compliance with FDIC recordkeeping requirements.

[Name of institution]'s capital category currently is [insert prompt corrective action capital category]. Thus, in our best judgment, employee benefit plan deposits are currently eligible for ''pass-through'' insurance coverage under the applicable federal law and FDIC insurance regulations.

Under the FDIC's insurance regulations on employee benefit plan deposits, an insured bank or savings association must notify employee benefit plan depositors if new, rolled-over or renewed employee benefit plan deposits would be ineligible for ''pass-through'' insurance and must provide certain ratios on the institution's capital condition to employee benefit plan depositors who request such information. If you would like additional information on [name of institution]'s capital condition, please make a request [describe procedures for obtaining the additional capital information].

2. A sample disclosure that an insured depository institution may use when new, renewed or rolled-over employee benefit plan deposits will not be eligible for ''pass-through'' insurance coverage is as follows:

On [date] [name of institution]'s capital category changed from [previous PCA category] to [current PCA category]. Because of this change in [name of institution]'s capital category and the institution's inability otherwise to satisfy the applicable FDIC requirements in this regard, any employee benefit plan funds deposited, rolled-over or renewed with [name of institution] after [date] will NOT be eligible for ''pass-through'' (or per-participant) deposit insurance coverage under § 330.12 of the FDIC's regulations. Accordingly, plan deposits made, rolled-over or renewed after [date] will be aggregated and insured only up to $100,000. This unavailability of ''pass-through'' insurance coverage on new, rolled-over or renewed deposits will continue until the institution's capital category improves and/or other applicable requirements are satisfied. Deposits made over the period of time when ''pass-through'' insurance coverage is unavailable will not be eligible for ''pass-through'' coverage unless and until these deposits are rolled-over or renewed at a time when ''pass-through'' insurance coverage is again available. ''Pass-through'' insurance coverage on deposits made before [insert date when ''pass-through'' coverage no longer is available] is not affected.

K. Delayed Effective Date of the Disclosure Requirements

Four commenters recommended that the effective date of the final rule be delayed 150 to 180 days to permit institutions the time needed to develop automation systems, and policies and procedures to ensure compliance. Many commenters indicated they presently do not have a recordkeeping system that will identify employee benefit plan accounts. Some commenters indicated that they would have to notify all existing depositors in order to develop such a recordkeeping system.

As indicated in § 330.12 of the FDIC's regulations, in order for employee benefit plan deposits to be eligible for pass-through insurance coverage, among other things, the recordkeeping requirements of § 330.4 of the FDIC's

regulations (12 CFR 330.4) must be satisfied. Under § 330.4, in order for pass-through insurance to be available for fiduciary-type accounts (in which one party has deposited funds for the benefit of others) the bank's deposit account records must disclose the existence of the fiduciary relationship, and the details of the relationship and the interests of the other party(ies) must be ascertainable from the deposit account records of the insured depository institution or records maintained by the depositor, or a third party who has contracted with the depositor to maintain such records on his/her behalf.

Some insured depository institutions that commented on the proposed rule stated that their records did not classify deposits specifically as employee benefit plan deposits; thus, they contended that it would be burdensome to develop and implement a new system for purposes of complying with the proposed disclosure requirements. The FDIC believes the final rule addresses this issue. A list can be maintained for new accounts going forward and a list of existing customers can be established over time. An event triggering the required disclosures when an institution no longer can offer ''pass-through'' insurance coverage is believed to be an infrequent occurrence.

The changes made by FDICIA to insurance coverage applicable to employee benefit plan deposits have been in effect since December 1992. Thus, institutions should be aware of the need to provide customers with timely disclosures on the availability of ''pass-through'' coverage for employee benefit plan deposits. We assume that this already has been done by a general or specific mailing by institutions to affected depositors.

Taking into consideration the period of time the revised ''pass-through'' insurance rules have been in effect but factoring in the ''lead-time'' several commenters said was needed to develop and implement the mechanisms required to comply with the ''upon-request'' disclosure provisions of the final rule, the Board has decided to delay the effective date of the revisions to § 330.12 until July 1, 1995. This should provide insured depository institutions a sufficient period of time to satisfy all of the disclosure requirements of the final rule. This delay in the effective date also takes into consideration section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 (Pub. L. 103–325) (RCDRIA), which states, in part, that any new regulations and amendments to existing regulations which impose reporting, disclosure, or other requirements on insured depository institutions may only take effect on the first day of a calendar quarter unless certain exceptions are met.

L. Explanation of the Disclosure Requirements Under § 330.12, Including the Requirement Affecting Existing Deposits on the Effective Date of the Final Rule That Are Not Eligible for ''Pass-Through'' Insurance Coverage

The final rule will apply with respect to employee benefit plan funds on deposit with an insured depository institution on the effective date of the final rule and such funds deposited on and after that date. Institutions with employee benefit plan deposits on the effective date of the final rule that, when deposited, were not eligible for ''pass-through'' insurance coverage (under § 330.12(a) and (b) of the FDIC's regulations) must provide to such existing depositors the disclosure statement and notice that ordinarily are required under § 330.12(h)(2) of the final rule when an employee benefit plan account is opened. This requirement encompasses employee benefit plan funds deposited between December 19, 1992 (the effective date of the applicable provisions of FDICIA) and the effective date of the final rule. These depositors otherwise would not come within the scope of the final rule and thus, would not receive the disclosures otherwise required. The disclosure documents referred to above must be provided within 10 business days after the effective date of the final rule.

After the effective date of the final rule, insured depository institutions that accept employee benefit plan deposits that are not eligible for ''pass-through'' insurance coverage are subject to the disclosure requirements contained in § 330.12(h)(3) of the final rule.

M. Coordination With Other Federal Agencies

The FDIC has consulted with the other federal banking and thrift regulators in developing the final rule and intends to continue to work with the other federal regulators to assure, among other things, consistent and minimally burdensome implementation of the final rule.

Technical Amendments to Part 330 Unrelated to the Proposed Amendments to § 330.12

The following is a discussion of the technical amendments to Part 330 made by the final rule that are unrelated to the proposed amendments to § 330.12. The amendments pertain to commingled accounts of bankruptcy trustees, joint accounts, accounts for which an insured depository institution is acting in a fiduciary capacity, and accounts for which an insured depository institution is acting as the trustee of an irrevocable trust. Because, as discussed below, the amendments merely clarify current rules applicable to deposit insurance coverage, they are outside the scope of section 302 of RCDRIA. Thus, they need not take effect on the first day of a calendar quarter; instead, the technical amendments will become effective 30 days after the final rule is published in the **Federal Register**.

A. Commingled Accounts of Bankruptcy Trustees

One technical amendment codifies the FDIC's long-standing staff interpretation of the insurance coverage available to a commingled bankruptcy trustee's account. For many years, the FDIC's staff has advised bankruptcy trustees and other interested parties that, when a bankruptcy trustee appointed under title 11 of the *United States Code* commingles the funds of two or more bankruptcy estates in the same trust account (such an account is viewed as the account of a statutory irrevocable trust created by one of the chapters of title 11 of the *United States Code),* the funds of each title 11 bankruptcy estate will receive pass-through coverage—that is, each bankruptcy estate will be separately insured for up to $100,000—provided that the recordkeeping requirements of 12 CFR 330.4(b) are met.[3] However, in spite of the FDIC's staff interpretation, the Department of Justice's Executive Office for United States Trustees (Executive Office), the organization charged with supervising the administration of bankruptcy estates and trustees, has declined to recognize that there is pass-through insurance for such accounts. In accordance with section 345 of the Bankruptcy Code, 11 U.S.C. 345, the Executive Office has required banks holding such bankruptcy trustee accounts to provide collateral for any such funds that are not insured by the FDIC. But because the Executive Office does not recognize pass-through insurance for such accounts, banks holding such accounts are being required to pledge more collateral than is actually necessary. The Executive Office has stated that it will recognize pass-through coverage, and reduce its

[3] FDIC Advisory Opinions published on this subject include FDIC–93–59 (August 17, 1993), FDIC 89–21 (June 13, 1989), FDIC–88–74 (November 9, 1988), FDIC 87–17 (October 9, 1987), and FDIC–82–8 (March 25, 1982).

collateral requirements accordingly, provided that the FDIC Board takes formal action assuring such accounts pass-through coverage. For this reason, the Board has decided to include an amendment to the FDIC's insurance regulations, in the form of a new § 330.11(d), confirming that pass-through insurance coverage will be provided for such bankruptcy trustee accounts.

The technical amendment codifying the long-standing interpretation by FDIC staff of the insurance coverage available to the commingled account of a bankruptcy trustee qualifies as an interpretative rule; thus, it is exempt from the prior notice and comment requirements ordinarily imposed by the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(A).

B. Joint Deposit Accounts

Another technical amendment clarifies the meaning of § 330.7(c) of the FDIC's regulations (12 CFR 330.7(c)), which specifies the requirements an account must meet to qualify for separate insurance coverage as a joint account. Section 330.7(c) exempts certain types of accounts, such as certificates of deposit, from the general requirement that each co-owner must sign a signature card, but the regulation states that ''all such deposit accounts, must, in fact, be jointly owned''. Contrary to the FDIC's long-standing interpretation, some courts have interpreted the quoted language to require the FDIC to consider state law and evidence outside the deposit account records of the insured institution to contradict otherwise unambiguous deposit account records, in connection with claims that what appear to be joint accounts are in fact individually-owned. The FDIC intended, however, that depositors be bound by its recordkeeping regulation at 12 CFR 330.4(a), which requires that the deposit account records be considered conclusive if they are unambiguous. Reliance on the deposit account records is critical if the FDIC is to fulfill its obligation to make insurance determinations and issue checks in a timely fashion after a bank fails. It is also critical in preventing fraudulent claims. Several courts have recognized the need for the FDIC to rely on such records in making insurance determinations. *Fouad & Sons* v. *FDIC*, 898 F.2d 482 (5th Cir. 1990), *In re Collins Securities Corp.*, 998 F.2d 551 (8th Cir. 1993), *Jones* v. *FDIC*, 748 F.2d 1400 (10th Cir. 1984).

For this reason, the amendment as presently proposed would remove the ''but all such deposits must, in fact, be jointly owned'' language from § 330.7(c), and add that all deposit accounts which meet the requirements for qualifying joint accounts, including those which are exempted from the requirement that every co-owner must sign a signature card, will be deemed to be jointly-owned if the FDIC determines that the deposit account records are clear and unambiguous. The signatures of two or more persons on a deposit account signature card or the names of two or more persons on a certificate of deposit shall be conclusive evidence of a joint account if the deposit account records are clear and unambiguous. Only if the deposit account records are found to be ambiguous on the issue of ownership will evidence outside the deposit account records be considered, in accordance with the recordkeeping provisions of § 330.4(a). After taking into account the comments received on this amendment, FDIC staff has revised the amendment proposed earlier (and published for comment at 58 FR 64525 (December 8, 1993)) to conform more closely to the long-standing FDIC practice articulated by § 330.4(a).

The technical amendment on joint account coverage was published for comment as part of the proposed version of this capital disclosure regulation. 58 FR 64521 (December 8, 1993). The FDIC received two comments on the proposed amendment clarifying what evidence is necessary to determine the ownership of a joint account. An industry trade group opposed the amendment because of concern that it might permit the FDIC to ignore outside evidence of ''fundamental claims'' about the ''viability'' of a joint account under state law—for example, evidence that an account signature was forged, that one of the signers was incompetent when he signed, or that his signature was coerced. A savings association cited similar concerns but suggested that any outside evidence on such issues be considered under federal law, not state law.

It is important to emphasize that, when the FDIC says that it will rely on the deposit account records if they are clear and unambiguous, it will do so only to determine the appropriate ownership category for insurance purposes. Such reliance will not necessarily preclude a depositor from proving that a deposit account existed when the bank's deposit account records show no evidence of such an account, or that an account actually contained more funds than are reflected in the bank's deposit account records. When the FDIC determines that the deposit account records are ambiguous or unclear, it has the discretion to consider evidence beyond the deposit account records. Of course, the FDIC need not find such extrinsic evidence persuasive. However, while the FDIC understands that account records may not always accurately reflect the intent of the parties to the account, and that circumstances may sometimes render the accounts invalid under state law,[4] the FDIC believes that it is essential to make insurance determinations without considering outside evidence concerning the ownership category of accounts as long as the account records are clear.

The recordkeeping regulations, by requiring that the deposit account records be considered conclusive if they are unambiguous, serve several important purposes. When a bank fails, it is important that the FDIC be permitted to make insurance determinations and issue checks to depositors in a timely fashion, a timeliness made possible by the FDIC's reliance on those deposit account records that are clear. Reliance on unambiguous account records also permits the FDIC to determine the least cost resolution of a failed institution and to prevent fraudulent insurance claims. These purposes require that the deposit account records, even if they do not correctly reflect the parties' intent, be deemed conclusive if they are unambiguous. Of course, if the records are ambiguous or unclear, the FDIC may, in its discretion, rely on other evidence. Moreover, as the regulations already provide, state law concerning ownership of ambiguously-owned accounts are only the starting point for determining the ownership issue; federal law ultimately controls.

For this reason, the Board has decided to include as part of this final rule the proposed amendment to the FDIC's deposit insurance rules on joint accounts. The amendment clarifies that an account holder seeking to prove that what appears to be a joint account is actually an account held in a right and capacity other than joint ownership (for example, as an individually-owned account) must satisfy the requirements of § 330.4(a) of the FDIC's regulations

[4] On the subject of state law, § 330.3(h) of the FDIC's insurance regulations states that ''while ownership under state law of deposited funds is a necessary condition for deposit insurance, ownership under state law is not sufficient for, or decisive in, determining deposit insurance coverage.'' Instead, ''[d]eposit insurance coverage is also a function of the deposit account records of the insured depository institution, of recordkeeping requirements, and of other provisions of this part, which, in the interest of uniform national rules for deposit insurance coverage, are controlling for purposes of determining deposit insurance coverage''. 12 CFR 330.3(h).

(12 CFR 330.4(a)) on the recognition of deposit ownership. Section 330.4(a) provides, in part, that, if the FDIC determines that the deposit account records of an insured depository institution are clear and unambiguous, no other records will be considered as to the manner in which those funds are owned. Section 330.5(a) of the FDIC's regulations (12 CFR 330.5(a)) already explicitly addresses the situation where more than one natural person has the right to withdraw funds from an account that is actually viewed as individually-owned. The amendment applies to situations involving deposits which appear to be jointly-owned but which are claimed to be held in other rights and capacities.

C. Accounts for Which an Insured Depository Institution Acts as an Agent, Nominee, Guardian, Custodian or Conservator

Another technical amendment concerns § 330.6(a) of the FDIC's regulations (12 CFR 330.6(a)), which governs the insurance coverage provided for agency or fiduciary accounts. Section 330.6(a) currently indicates that funds deposited by an insured depository institution acting in a fiduciary capacity are governed by § 330.10 of the insurance regulations. However, in May 1993 the FDIC amended § 330.10, along with several other sections of the insurance regulations, primarily to implement revisions to the insurance rules made by section 311 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA, Pub. L. 102–242, 105 Stat. 2236) (58 FR 29952 (May 25, 1993)). One of those required revisions limits, effective December 19, 1993, the separate insurance formerly applicable to an account held by an insured depository institution in a fiduciary capacity to an account held by an insured depository institution as a trustee of an irrevocable trust. However, the May 1993 amendment simply revised § 330.10; § 330.6 continued to refer to § 330.10 but was not revised, stating instead that ''[w]hen such funds are deposited by an insured depository institution acting in a fiduciary capacity, the insurance coverage shall be governed by the provisions of § 330.10 of this part''.

The present technical amendment conforms § 330.6(a) to section 311 of FDICIA. The first sentence of § 330.6(a) states the general rule—that funds owned by a principal or principals and deposited into one or more deposit accounts in the name of a fiduciary shall be insured as if deposited in the name of the principal or principals. The second sentence implements the FDICIA change by stating that, when such funds are deposited by an insured depository institution acting as a trustee of an irrevocable trust, the insurance coverage will be governed by the provisions of § 330.10.

Like the technical amendment on joint account coverage, this technical amendment was published for comment as part of the proposed version of this capital disclosure regulation. 58 FR 64521 (December 8, 1993). The amendment proposed to state clearly, in § 330.6(a), that only funds deposited by an insured depository institution *acting as a trustee of an irrevocable trust* will be eligible for the separate insurance coverage described in § 330.10. Up until this time, § 330.6(a) had stated that funds deposited by an insured depository institution *acting in a fiduciary capacity* would be insured as provided by § 330.10, while § 330.10 stated that it pertains only to funds held by an institution acting as the trustee of an irrevocable trust. Thus, the amendment merely clarifies the language.

The FDIC received four comments on this technical amendment, all of which were favorable. Two, however, noted that the proposed regulatory language for § 330.6(a) seemed to except deposits held by insured depository institutions acting in a representative capacity from the general rule that all deposits held by fiduciaries are insured as if owned by the party represented by the fiduciary. Of course, even deposits held by insured depository institutions acting in a representative capacity follow this general rule. Thus, this final rule includes the proposed amendment to § 330.6(a), as revised to reflect the suggested clarification.

D. Accounts Held by Depository Institutions in Fiduciary Capacities

The final technical amendment further conforms the FDIC's regulations to section 311 of FDICIA, by changing the present title of § 330.10, ''Accounts held by depository institutions in fiduciary capacities'', to ''Accounts held by a depository institution as the trustee of an irrevocable trust''. This change conforms § 330.10 to section 311 of FDICIA and to the rest of § 330.10 itself. Because the amendment merely makes the title consistent with § 330.10, and because the text of § 330.10 was itself published for comment (57 FR 49026 (October 29, 1992), it is unnecessary, under the Administrative Procedure Act, to publish this proposed change for comment. 5 U.S.C. 553(b)(3)(B).

Paperwork Reduction Act

The final rule is intended to reduce uncertainty about whether employee benefit plan deposits are eligible for ''pass-through'' insurance coverage and to require depository institutions to provide timely disclosure to employee benefit plan depositors when ''pass-through'' deposit insurance coverage is no longer available. No collections of information pursuant to the Paperwork Reduction Act are contained in the final rule. Consequently, no information has been submitted to the Office of Management and Budget for review.

The technical amendments do not require any collections of information pursuant to section 3504(h) of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Accordingly, no information has been submitted to the Office of Management and Budget for review.

Regulatory Flexibility Act

Neither the final rule nor the technical amendments will have a significant impact on a substantial number of small businesses within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Accordingly, the Act's requirements relating to an initial and final regulatory flexibility analysis are not applicable.

List of Subjects in 12 CFR Part 330

Bank deposit insurance, Banks, Banking, Savings and loan associations, Trusts and trustees.

The Board of Directors of the Federal Deposit Insurance Corporation hereby amends Part 330 of title 12 of the Code of Federal Regulations as follows:

PART 330—DEPOSIT INSURANCE COVERAGE

1. The authority citation for Part 330 continues to read as follows:

Authority: 12 U.S.C. 1813(l), 1813(m), 1817(i), 1818(q), 1819(Tenth), 1820(f), 1821(a), 1822(c).

2. Section 330.6 is amended by revising paragraph (a) to read as follows:

§ 330.6 Accounts held by an agent, nominee, guardian, custodian or conservator.

(a) *Agency or nominee accounts.* Funds owned by a principal or principals and deposited into one or more deposit accounts in the name of an agent, custodian or nominee shall be insured to the same extent as if deposited in the name of the principal(s). When such funds are deposited by an insured depository institution acting as a trustee of an irrevocable trust, the insurance coverage

shall be governed by the provisions of § 330.10 of this part.

* * * * *

3. Section 330.7 is amended by revising paragraph (c) to read as follows:

§ 330.7 Joint ownership accounts.

* * * * *

(c) *Qualifying joint accounts.* (1) A joint deposit account shall be deemed to be a qualifying joint account, for purposes of this section, only if:

(i) All co-owners of the funds in the account are natural persons; and

(ii) Each co-owner has personally signed a deposit account signature card; and

(iii) Each co-owner possesses withdrawal rights on the same basis.

(2) The requirement of paragraph (c)(1)(ii) of this section shall not apply to certificates of deposit, to any deposit obligation evidenced by a negotiable instrument, or to any account maintained by an agent, nominee, guardian, custodian or conservator on behalf of two or more persons.

(3) All deposit accounts that satisfy the criteria in paragraph (c)(1) of this section, and those accounts that come within the exception provided for in paragraph (c)(2) of this section, shall be deemed to be jointly owned provided that, in accordance with the provisions of § 330.4(a) of this part, the FDIC determines that the deposit account records of the insured depository institution are clear and unambiguous as to the ownership of the accounts. If the deposit account records are ambiguous or unclear as to the manner in which the deposit accounts are owned, then the FDIC may, in its sole discretion, consider evidence other than the deposit account records of the insured depository institution for the purpose of establishing the manner in which the funds are owned. The signatures of two or more persons on the deposit account signature card or the names of two or more persons on a certificate of deposit or other deposit instrument shall be conclusive evidence that the account is a joint account unless the deposit records as a whole are ambiguous and some other evidence indicates, to the satisfaction of the FDIC, that there is a contrary ownership capacity.

* * * * *

4. The heading of § 330.10 is revised to read as follows:

§ 330.10 Accounts held by a depository institution as the trustee of an irrevocable trust.

5. Section 330.11 is amended by adding a new paragraph (d) to read as follows:

§ 330.11 Irrevocable trust accounts.

* * * * *

(d) *Commingled accounts of bankruptcy trustees.* Whenever a bankruptcy trustee appointed under Title 11 of the *United States Code* commingles the funds of various bankruptcy estates in the same account at an insured depository institution, the funds of each Title 11 bankruptcy estate will be added together and insured for up to $100,000, separately from the funds of any other such estate.

6. Section 330.12 is amended by revising the heading and introductory text of paragraph (g), redesignating paragraphs (g)(1), (g)(2) and (g)(3) as paragraphs (g)(2), (g)(3) and (g)(4), respectively, and adding new paragraphs (g)(1) and (h) to read as follows:

§ 330.12 Retirement and other employee benefit plan accounts.

* * * * *

(g) *Definitions of ''depositor'', ''employee benefit plan'', ''employee organizations'' and ''non-contingent interest''.* Except as otherwise indicated in this section, for purposes of this section:

(1) The term *depositor* means the person(s) administering or managing an employee benefit plan.

* * * * *

(h) *Disclosure of capital status*—(1) *Disclosure upon request.* An insured depository institution shall, upon request, provide a clear and conspicuous written notice to any depositor of employee benefit plan funds of the institution's leverage ratio, Tier 1 risk-based capital ratio, total risk-based capital ratio and prompt corrective action (PCA) capital category, as defined in the regulations of the institution's primary federal regulator, and whether, in the depository institution's judgment, employee benefit plan deposits made with the institution, at the time the information is requested, would be eligible for ''pass-through'' insurance coverage under paragraphs (a) and (b) of this section. Such notice shall be provided within five business days after receipt of the request for disclosure.

(2) *Disclosure upon opening of an account.* (i) An insured depository institution shall, upon the opening of any account comprised of employee benefit plan funds, provide a clear and conspicuous written notice to the depositor consisting of: an accurate explanation of the requirements for pass-through deposit insurance coverage provided in paragraphs (a) and (b) of this section; the institution's PCA capital category; and a determination of whether or not, in the depository institution's judgment, the funds being deposited are eligible for ''pass-through'' insurance coverage.

(ii) An insured depository institution shall provide the notice required in paragraph (h)(2)(i) of this section to depositors who have employee benefit plan deposits with the insured depository institution on July 1, 1995 that, at the time such deposits were placed with the insured depository institution, were not eligible for pass-through insurance coverage under paragraphs (a) and (b) of this section. The notice shall be provided to the applicable depositors within ten business days after July 1, 1995.

(3) *Disclosure when ''pass-through'' coverage is no longer available.* Whenever new, rolled-over or renewed employee benefit plan deposits placed with an insured depository institution would no longer be eligible for ''pass-through'' insurance coverage, the institution shall provide a clear and conspicuous written notice to all existing depositors of employee benefit plan funds of its new PCA capital category, if applicable, and that new, rolled-over or renewed deposits of employee benefit plan funds made after the applicable date shall not be eligible for ''pass-through'' insurance coverage under paragraphs (a) and (b) of this section. Such written notice shall be provided within 10 business days after the institution receives notice or is deemed to have notice that it is no longer permitted to accept brokered deposits under section 29 of the Act and the institution no longer meets the requirements in paragraph (b) of this section.

(4) *Definition of ''employee benefit plan''.* For purposes of this paragraph, the term *employee benefit plan* has the same meaning as provided under paragraph (g)(2) of this section but also includes any eligible deferred compensation plans described in section 457 of the Internal Revenue Code of 1986 (26 U.S.C. 457).

By order of the Board of Directors.

Dated at Washington, D.C., this 31st day of January, 1995.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Acting Executive Secretary.

[FR Doc. 95–3178 Filed 2–8–95; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 95N–0025]

Food Labeling; General Requirements for Nutrition Labeling of Dietary Supplements; General Requirements for Nutrient Content Claims for Dietary Supplements

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of intent.

SUMMARY: The Food and Drug Administration (FDA) is announcing that, given the need to modify its regulations on nutrition labeling and nutrient content claims for dietary supplements to respond to the 1994 Dietary Supplement Health and Education Act (the 1994 DSHEA), it does not intend to enforce those regulations until after December 31, 1996. FDA is issuing this notice of intent in response to inquiries from the dietary supplement industry.

FOR FURTHER INFORMATION CONTACT: Virginia L. Wilkening, Center for Food Safety and Applied Nutrition (HFS–165), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5483.

SUPPLEMENTARY INFORMATION:

I. Background

The Nutrition Labeling and Education Act (the 1990 amendments) was enacted on November 8, 1990. This law amended the Federal Food, Drug, and Cosmetic Act (the act) to require that virtually all foods, including conventional foods and dietary supplements, bear nutrition labeling (section 403(q) of the act (21 U.S.C. 343(q)), and that if they bear claims about the level of nutrients that they contain, those claims be made in accordance with definitions adopted by FDA (see section 403(r) of the act). The 1990 amendments required that FDA issue proposed rules implementing these provisions within 12 months from the date of their enactment and final rules within 24 months (sections 2(b) and 3(b) of the 1990 amendments). The final rules were to be effective 6 months after they were issued, although FDA was authorized to delay application of the rules for up to 1 year if it found that compliance with the nutrition labeling and nutrient content claim provisions would cause undue economic hardship (section 10(a) of the 1990 amendments).

FDA issued proposed rules on November 27, 1991 (see 56 FR 60366 and 60421). On October 29, 1992, however, shortly before the final rules were to be issued, the Dietary Supplement Act of 1992 (the 1992 DS act) (Title II of Pub. L. 102–571) was enacted. This law took dietary supplements out of the rulemaking schedule that had been established under the 1990 amendments. It provided that FDA issue new proposals on the nutrition labeling of, and nutrient content claims for, dietary supplements by June 15, 1993, and that the agency issue final rules by December 31, 1993. However, the provisions of the 1990 amendments that made the final rules effective 6 months after issuance, and that gave FDA discretion to delay their applicability for 1 year, continued to apply to dietary supplements.

Consistent with the 1990 amendments and the 1992 DS act, on June 18, 1993 (58 FR 33715 and 33731), FDA issued proposed rules on the nutrition labeling and nutrient content claims for dietary supplements. On January 4, 1994 (59 FR 354 and 378), FDA issued the final rules. As stated above, under the 1990 amendments, these final rules were to be effective 6 months from December 31, 1993, or on July 1, 1994. However, in conjunction with the publication of the final rules, FDA made a finding that requiring compliance by that date would cause dietary supplement manufacturers undue economic hardship (59 FR 350, January 4, 1994). Therefore, FDA stated that these manufacturers need not comply with the final rules on nutrition labeling and nutrient content claims until July 1, 1995.

Having completed these rulemakings, FDA anticipated that dietary supplement firms would begin taking steps to come into compliance with the new rules, and dietary supplement manufacturers have apparently done so. For example, in 1994, a number of dietary supplement trade associations held conferences about the new rules, and FDA received inquiries from a number of firms about what steps are required.

In October 1994, however, a significant ambiguity was introduced into the regulation of the labeling of dietary supplements. At that time, the 1994 DSHEA (Pub. L. 103–417) was enacted. This new law amended both the nutrition labeling and nutrient content claim provisions of the act (see sections 7(b) and (c) of the 1994 DSHEA). It made limited changes in how nutrition information is to be presented in the labeling of dietary supplements, although it made implementation of these changes subject to regulations adopted by the Secretary of Health and Human Services (and, by delegation, FDA) (section 403(q)(5)(F) of the act). It also limited in one respect the nutrient content claims for dietary supplements that must be defined by regulation by FDA (section 403(r)(2)(F) of the act).

With respect to the effective date of these amendments and to the other labeling provisions enacted as part of the new law, the 1994 DSHEA stated that dietary supplements may be labeled in accordance with its provisions after its date of enactment, and that they must be labeled in compliance with its provisions after December 31, 1996 (section 7(e) of the 1994 DSHEA). The new law was silent, however, with respect to its effect on the July 1, 1995, applicability date established under the 1990 amendments and the 1992 DS act for FDA's regulations on the nutrition labeling and nutrient content claim requirements for dietary supplements.

II. Statement

In the wake of the new law, FDA has received inquiries from the dietary supplement industry about how the agency intends to enforce the law. One trade association wrote that its members are making efforts to comply with the July 1, 1995, effective date established under the 1990 amendments and the 1992 DS act, but that, as a practical matter, that effective date should not be enforced to allow the process of implementing the 1994 DSHEA to proceed in a reasonable fashion. The trade association cautioned that if FDA did not follow such a course, companies would be put in the untenable position of needing to relabel in July 1995, only to relabel again by the end of 1996 (Ref. 1).

FDA believes that it is appropriate, in response to these inquiries, to issue a statement on how it intends to enforce its nutrition labeling and nutrient content claim regulations with respect to dietary supplements in light of the passage of the 1994 DSHEA (Ref. 2). In formulating this statement, FDA has carefully considered Congress' goals in passing the 1994 DSHEA and the 1990 amendments, as well as the needs of the companies that are required to label their products in accordance with the act and of consumers to whom the information in question is to be provided.

In the 1990 amendments, Congress required that food labels bear information that will help consumers to maintain healthy dietary practices and established timeframes for the implementation of the legislation to

ensure that it would be given effect without undue delay. In the 1994 DSHEA, Congress, while embracing most of what FDA has done under the 1990 amendments with respect to dietary supplements, sought to provide for the inclusion of additional information on the nutrition label and to provide additional flexibility in how that information is presented. The dietary supplement industry is left facing an applicability date for FDA's nutrition labeling and nutrient content claim regulations for dietary supplements of July 1, 1995, without complete guidance on how the nutrition label is ultimately to be presented on these products. As for consumers, they are currently provided with nutrition information on many, but by no means all, dietary supplements, but that information is not being presented in a form that is consistent with the ''Nutrition Facts'' panel that appears on conventional foods.

Having considered these factors, FDA advises that, while the nutrition labeling and nutrient content claim regulations implementing the 1990 amendments for dietary supplements will go into effect on July 1, 1995, it does not intend to enforce those regulations until it has modified them to reflect the 1994 DSHEA, and until after dietary supplement manufacturers are required to label their products in accordance with the 1994 DSHEA; that is, not until after December 31, 1996.

FDA considers this course of action appropriate for several reasons. First, FDA recognizes the merit in the dietary supplement industry's argument that it should not be required to relabel its products until it has a full understanding of what its alternatives and obligations are. Enforcing the nutrition labeling and nutrient content claims regulations on July 1, 1995, would require dietary supplement manufacturers to choose between relabeling their products twice, the first time to come into compliance and the second to take advantage of the flexibility provided by the new law, or foregoing that flexibility. To force dietary supplement manufacturers to make such a choice would be a result that the agency does not believe Congress contemplated or would have intended in enacting the 1994 DSHEA.

The 1994 DSHEA provides for flexibility in the dietary ingredients that can be included in the ''Nutrition Facts'' box and in the presentation of ingredient information. FDA, pursuant to the 1994 DSHEA, is at work on regulations that define this flexibility. FDA agrees that industry should have an opportunity to take advantage of this flexibility without being forced to relabel twice to do so. FDA acknowledges that it will not be possible for the agency to have its regulations in place, nor for the industry to have adequate time to design its labeling in accordance with these regulations, by July of this year. Thus, the interests of industry and the policies embodied in the 1994 DSHEA will be advanced if FDA declines to enforce the nutrition labeling and nutrient content claim regulations that apply to dietary supplements until after December 31, 1996, when they will be fully modified to reflect the 1994 DSHEA.

While the purposes of the 1990 amendments will not be as clearly advanced by such a course of action, they will also not be contravened. Implementation of the 1994 DSHEA will move FDA forward toward its goal of full implementation of the 1990 amendments. Moreover, while Congress sought to rule out undue delay in implementation of the 1990 amendments, a delay caused by implementation of another law enacted by Congress can hardly be considered ''undue.''

Finally, it is true that consumers face an additional delay before dietary supplements bear nutrition information that is as consistent as possible, both in content and presentation, with that on other foods, and until there is full compliance by dietary supplements with the nutrient content claim provisions of the act. These facts are mitigated, however, by the fact that there is information listing nutrients and their levels on many dietary supplements, and that many dietary supplements do not bear nutrient content claims.

Thus, having fully considered these factors, the agency advises that it does not intend to enforce the nutrition labeling and nutrient content claims regulations that apply to dietary supplements until after December 31, 1996. The agency is at work developing a proposal that implements the labeling provisions of the 1994 DSHEA and expects to publish it in the near future.

III. References

The following references have been placed on display in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Cordaro, John, President, Council for Responsible Nutrition, letter to David A. Kessler, Commissioner, FDA, December 7, 1994.

2. Shank, Fred, R., Director, Center for Food Safety and Applied Nutrition, FDA, letter to John B. Cordaro, President, Council for Responsible Nutrition, January 30, 1995.

Dated: February 6, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–3294 Filed 2–8–95; 8:45 am]

BILLING CODE 4160–01–F

AGENCY FOR INTERNATIONAL DEVELOPMENT

22 CFR Part 226

Administration of Assistance Awards to U.S. Non-Governmental Organizations

AGENCY: Agency for International Development (USAID).

ACTION: Correction to interim final rule.

SUMMARY: This document contains a correction to the interim final rule which was published Thursday, January 19, 1995 (60 FR 3743). The rule relates to the administration of assistance awards to U.S. Non-Governmental Organizations.

EFFECTIVE DATE: February 9, 1995.

FOR FURTHER INFORMATION CONTACT: Diana Joan Esposito, Office of Procurement, Procurement Policy and Evaluation (M/OP/P), USAID, SA–14 Rm. 1600I, 320 21st Street, Washington, DC 20523. Telephone 703 875–1529, Fax 703–875–1243.

SUPPLEMENTARY INFORMATION:

Background

On January 19, 1995, USAID issued an interim final rule at 22 CFR part 226 which implemented Office of Management and Budget (OMB) Circular A–110.

Need for Correction

As published, the preamble refers to a change that was not implemented in the interim final rule.

Correction of Publication

Accordingly, the publication on January 19, 1995 of the interim final rule, is corrected as follows:

Preamble [Corrected]

On page 3744, in the first column, at the paragraph beginning ''Section 226.22(l) is revised to provide * * *'' is corrected to read: ''Section 226.22(l) is revised to provide that USAID may authorize recipients to retain all interest earned in accordance with USAID's statutory authority.'' The statement in the preamble that interest earned will be remitted to USAID has been deleted.

With this correction, the preamble and the rule at 226.22(l) are in agreement.

Dated: January 27, 1995.

Michael D. Sherwin,

Deputy Assistant Administrator for Management.

[FR Doc. 95–3271 Filed 2–8–95; 8:45 am]

BILLING CODE 6116–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TN–118–1–6083a; TN–101–1–5718a; TN–110–2–6569a; FRL–5146–1]

Approval and Promulgation of Implementation Plans; Tennessee: Approval of Revisions to Tennessee Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving revisions to the Tennessee State Implementation Plan (SIP) for ozone. These revisions were submitted to EPA through the Tennessee Department of Environment and Conservation (TDEC) on November 5, 1992, May 18, 1993, and July 6, 1993, for the Nashville nonattainment area and revise regulations for Stage I vapor recovery (Stage I) in the Tennessee SIP and add regulations pertaining to Stage II vapor recovery (Stage II). These revisions regulate gasoline dispensing stations in Davidson, Rutherford, Sumner, Williamson, and Wilson counties. These regulations have been submitted by the TDEC to satisfy the requirement of section 182(b)(3) of the 1990 Clean Air Act, which requires all ozone nonattainment areas classified as moderate or above to require owners and operators of gasoline dispensing facilities to install and operate Stage II vapor recovery systems. The revisions also make minor changes to the Nashville-Davidson County Rules regulating definitions and recordkeeping. The TDEC has also submitted this plan as an integral part of the program to achieve and maintain the National Ambient Air Quality Standards (NAAQS) for ozone. These regulations meet all of EPA's requirements and therefore EPA is approving this SIP revision.

DATES: This final rule will be effective April 10, 1995 unless adverse or critical comments are received by March 13, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments on this action should be addressed to Alan W. Powell, at the EPA Regional Office listed.

Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Region 4 Air Programs Branch, Environmental Protection Agency345 Courtland Street, NE., Atlanta, Georgia 30365.

Tennessee Department of Environment and Conservation, L & C Annex, 9th floor, 401 Church Street, Nashville, Tennessee 37243.

Nashville-Davidson County Bureau of Environmental Health Services, Metropolitan Health Department, 311–23rd Avenue, North, Nashville, Tennessee 37203.

FOR FURTHER INFORMATION CONTACT: Alan W. Powell, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365. The phone number is (404) 347–3555 ext.4209. Reference file TN–118–1–6083.

SUPPLEMENTARY INFORMATION: On November 15, 1990, the President signed into law the Clean Air Act Amendments of 1990. The Clean Air Act as amended in 1990 (CAA) includes new requirements for the improvement of air quality in ozone nonattainment areas. Under section 181(a) of the CAA, nonattainment areas were categorized by the severity of the area's ozone problem, and progressively more stringent control measures were required for each category of higher ozone concentrations. The basis for classifying an area in a specific category was determined by the ambient air quality data obtained for the three year period 1987 through 1989. The CAA delineates in section 182 the SIP requirements for ozone nonattainment areas based on their classifications. Section 182(b)(3) requires areas classified as moderate to implement Stage II controls unless and until the EPA promulgates, On Board Vapor Recovery (OBVR) regulations pursuant to section 202(a)(6) of the CAA. On January 22, 1993, the United States Court of Appeals for the District of Columbia ruled that the EPA's previous decision not to require OBVR controls be set aside and that OBVR regulations be promulgated pursuant to section 202(a)(6) of the CAA. The EPA Administrator signed the OBVR final rule on January 24, 1994.

Subsequently, the EPA determined under section 182(b)(3) that moderate areas are not required to implement Stage II regulations. However, Tennessee has indicated that a Stage II program is necessary as a volatile organic compound (VOC) control measure to attain the ozone NAAQS in Nashville, which has been classified as a moderate nonattainment area for ozone. Stage II vapor recovery is included in the State's 15% Plan required by section 182 (b)(1) of the CAA. Under section 182 (b)(3), the EPA was required to issue guidance as to the effectiveness of Stage II systems. In November 1991, the EPA issued technical and enforcement guidance to meet this requirement. These two documents are entitled ''Technical Guidance-Stage II Vapor Recovery Systems for Control of Vehicle Refueling Emissions at Gasoline Dispensing Facilities'' (EPA–450/3–91–022) and ''Enforcement Guidance for Stage II Vehicle Refueling Control Programs.'' In addition, on April 16, 1992, the EPA published the ''General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990'' (57 FR 13498). The guidance documents and the General Preamble discuss Stage II statutory requirements and discuss what the EPA believes a State submittal needs to include to meet those requirements. The Tennessee regulations meet those requirements which are discussed below.

General Vapor Recovery Requirements

The CAA specifies the time by which certain facilities must comply with the State regulation. For facilities that are not owned or operated by an Independent Small Business Marketer (ISBM), these times, calculated from the time of State adoption of the regulation, are: (1) 6 months for facilities for which construction began after November 15, 1990, (2) 1 year for facilities that dispense greater than 100,000 gallons of gasoline per month, and (3) two years for all other facilities. For ISBM's, section 324(a) of the Act provides that the time periods may be: (1) 33 percent of the facilities owned by an ISBM by the end of the first year after the regulations take effect, (2) 66 percent of such facilities by the end of the second year, and (3) 100 percent of such facilities after the third year. Both the

State and County regulations are consistent with these guidelines.

Consistent with EPA's guidance, both the State and County regulations require that Stage II systems be tested and certified to meet a 95 percent emission reduction efficiency by using a system approved by the California Air Resources Board (CARB). The State and County regulations require sources to verify proper installation and function of Stage II equipment through use of a liquid blockage test and a leak test prior to system operation and every five years or upon major modification of a facility (i.e., 75 percent or more equipment change). The State and County regulations have also established an inspection program consistent with that described in EPA's guidance and has established procedures for enforcing violations of the Stage II requirements.

Rule 1200–3–18–.24, Gasoline Vapor Recovery, Stage II

The Nashville area is designated nonattainment for ozone and classified as moderate. See 56 FR 56694 (November 6, 1991) and 57 FR 56762 (November 30, 1992), codified at 40 CFR 81.300 through 81.437. Under section 182(b)(3) of the CAA, Tennessee was required to submit Stage II vapor recovery rules for this area by November 15, 1992. On May 18, 1993, and July 6, 1993, the Tennessee Department of Environment and Conservation submitted to EPA Stage II vapor recovery rules that became effective by the State on June 21, 1993. The Tennessee regulation meets EPA requirements as discussed below. Additional information is located in the Technical Support Document (TSD) which is available for review in the EPA Region 4 office.

The provisions of section 182(b)(3) of the CAA include a requirement for owners or operators of gasoline dispensing systems to install and operate Stage II vapor recovery equipment at their facilities. The CAA specifies that the state regulation must apply to any facility that dispenses more that 10,000 gallons of gasoline per month or, in the case of an ISBM, any facility that dispenses more than 50,000 gallons of gasoline per month. The definition of an ISBM is included in the TSD and may also be found in section 324 of the CAA. The State has adopted a general applicability requirement of 10,000 and has provided an applicability requirement of 50,000 for ISBM's. The State definition of ISBM is consistent with the definition in the CAA.

Regulation 7, Section 7–13, Gasoline Dispensing Facility, Stage I and Stage II

On November 5, 1992, the Metropolitan Health Department of Davidson County through the TDEC submitted to the EPA Stage II vapor recovery rules that became State effective on September 15, 1992. The Stage I portion of the regulation was unchanged. This regulation, which is applicable for the Davidson County area, is more stringent than the State regulation in that the Stage II portion of this regulation does not provide separate applicability requirements for ISBM's. The TDEC has provided the Metropolitan Health Department with a certificate of exemption from enforcement of the State rule. As a consequence, the Davidson County area will not be subject to the State rule, but rather will be subject to enforcement from the rule submitted by the Metropolitan Health Department.

Regulation 7, Section 7–1, Definitions

Paragraph 11, the definition of volatile organic compounds (VOC), was amended for clarity.

Regulation 7, Section 7–25, Record Keeping and Recording Requirements

Subsection (b) was amended to add a general three year record retention requirement.

Final Action

EPA is approving the aforementioned amendments to the Tennessee SIP because they meet all requirements of the CAA. This action is being published without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective April 10, 1995 unless, by March 13, 1995, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective April 10, 1995.

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993, memorandum from Michael Shapiro, Acting Assistant Administrator for Air and Radiation. A future document will inform the general public of these tables. On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions from the requirements of section 3 of Executive Order 12291 for 2 years. The EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the waiver until such time as it rules on EPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small non-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: January 6, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

Part 52 of chapter I, title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42.U.S.C. 7401–7671q.

Subpart RR—Tennessee

2. Section 52.2220 is amended by adding paragraph (c) (116) to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) * * *

(116) The Tennessee Department of Environment and Conservation submitted a SIP revision that amended Rule 1200–3–18 which was submitted to EPA on May 18, 1993. These amendments add Stage II provisions to this rule.

(i) Incorporation by reference.

(A) Rule 1200–3–18–.24 which became State-effective June 21, 1993.

(B) Revisions to the Davidson County portion of the Tennessee SIP. Rule 7, Section 7–1 (11), Rule 7, Section 7–13, Rule 7, Section 7–25(b) which became state effective on November 4, 1992.

(ii) Other material. None.

* * * * *

[FR Doc. 95–3211 Filed 2–8–95; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 52

[CA 96–1–6799; FRL–5151–2]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Mojave Desert Air Quality Management District; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Correction to direct final rule.

SUMMARY: This document contains corrections to the final regulation which was published Tuesday, January 3, 1995. The regulation concerned the inclusion of additional information to the California State Implementation Plan.

EFFECTIVE DATE: This correction is effective on February 9, 1995.

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1184.

SUPPLEMENTARY INFORMATION:

Background

On January 3, 1995, at 60 FR 38, EPA published a final rulemaking action to approve two negative declarations submitted by the California Air Resources Board for the Mojave Desert Air Quality Management Distict. The two negative declaration were included as additional information to the California State Implementation Plan in the form of Negative Declarations submitted by the California Air Resources Board for the Mojave Desert Air Quality Management District.

Need for Correction

As published, subparagraph (c) (200) used in the amendatory language section for 40 CFR Subpart F, California, § 52.220 Identification of plan at 60 FR 40 was incorrect and needs to be changed.

Correction of Publication

Accordingly, the publication on January 3, 1995 of the direct final rule FR Doc. 94–32232 is corrected as follows:

§ 52.220 [Corrected]

On page 40, in the first column, amendatory instruction 2. is corrected to read:

''Section 52.220 is amended by adding paragraph (c)(198)(ii) to read as follows:''

Dated: January 31, 1995.

Felicia Marcus,

Regional Administrator.

[FR Doc. 95–3213 Filed 2–8–95; 8:45 am]

BILLING CODE 6560–50–W

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 201–3, 201–9, 201–18, 201–20, 201–21, 201–23, and 201–39

RIN 3090–AE75

Amendment of Miscellaneous FIRMR Provisions; Correction

AGENCY: Information Technology Service, GSA.

ACTION: Final rule; correction.

SUMMARY: This document implements technical corrections to a final rule regarding updating General Services Administration (GSA) offices and symbols and clarifying various Federal Information Resources Management (FIRMR) provisions which were published on Wednesday, November 30, 1994, (59 FR 61281) and began on page 61281 in the **Federal Register**. This correction replaces the correction published in the **Federal Register** on Friday, January 6, 1995, (60 FR 2029), which contained typographical errors.

EFFECTIVE DATE: December 30, 1994.

FOR FURTHER INFORMATION CONTACT: R. Stewart Randall, Jr., GSA, Office of Information Resources Management Policy, telephone (202) 501–4469 (v) or (202) 501–0657 (tdd).

In 41 CFR Chapter 201 Amendment of Miscellaneous FIRMR provisions beginning on page 61281 in the issue of Wednesday, November 30, 1994, make the following corrections:

PART 201–3—[CORRECTED]

§ 201–3.402 [Corrected]

1. On page 61282, in the second column, in § 201–3.402, paragraph (b) is corrected by removing the correspondence symbol (KMR) and replacing it with the correspondence symbol ''(KAR)''.

PART 201–9—[CORRECTED]

§ 201–9.202–1 [Corrected]

2. On page 61282, in the second column, in § 201–9.202–1, paragraph (b)(7) is corrected by removing the correspondence symbol ''(KMR)'' and replacing it with the correspondence symbol ''(KAR)''.

§ 201–9.202–2 [Corrected]

3. On page 61282, in the second column, in § 201–9.202–2, paragraph (b)(1)(ix) is corrected by removing the correspondence symbol ''(KMA)'' and replacing it with the correspondence symbol ''(KAA)''.

PART 201–18—[CORRECTED]

§ 201–18.003 [Corrected]

4. On page 61282, in the second column, in § 201–18.003, line five is corrected by removing the correspondence symbol ''(KMA)'' and replacing it with the correspondence symbol ''(KAA)''.

PART 201–20—[CORRECTED]

§ 201–20.303 [Corrected]

5. On page 61282, in the third column, in § 201–20.303, paragraph

(d)(2), line five is corrected by removing the correspondence symbol ''(KMR)'' and replacing it with the correspondence symbol ''(KAR)''.

§ 201–20.305 [Corrected]

6. On page 61282, in the third column, in § 201–20.305, paragraph (a)(7) is corrected by removing the correspondence symbol ''(KMA)'' and replacing it with the correspondence symbol ''(KAA)''.

PART 201–21—[CORRECTED]

§ 201–21.403 [Corrected]

7. On page 61283, in the first column, in § 201–21.403, paragraph (a)(2)(ii), is corrected by removing the correspondence symbol ''(KMA)'' and replacing it with the correspondence symbol ''(KAA)''.

§ 201–21.603 [Corrected]

8. On page 61283, in the first column, in § 201–21.603, paragraphs (d)(1) and (d)(3) are corrected by removing the correspondence symbols ''(KMR)'' and replacing them with the correspondence symbol ''(KAR)'' in both paragraphs.

§ 201–21.604 [Corrected]

9. On page 61283, in the first column, in § 201–21.604(a) is corrected by removing the correspondence symbol ''(KMA)'' and replacing it with the correspondence symbol ''(KAA)''.

PART 201–23—[CORRECTED]

§ 201–23.003 [Corrected]

10. On page 61283, in the first column, in § 201–23.003, paragraphs (a) and (c) are corrected by removing the correspondence symbol ''(KMA)'' in both paragraphs and replacing them with the correspondence symbol ''(KAA)'' in both paragraphs.

PART 201–39—[CORRECTED]

§ 201–39.001 [Corrected]

11. On page 61283, in the third column, in § 201–39.001, paragraph (b) is corrected by removing the correspondence symbol ''(KMR)'' and replacing it with the correspondence symbol ''(KAR)'' and by removing the correspondence symbol ''KML'' and replacing it with the correspondence symbol ''KAL''.

§ 201–39.101–6 [Corrected]

12. On page 61283, in the third column, in § 201–39.101–6, paragraph (b) is corrected by removing the correspondence symbol ''(KMR)'' and replacing it with the correspondence symbol ''(KAR)''.

§ 201–39.104–1 [Corrected]

13. On page 61283, in the third column, the section numbering ''201–37.104–1'' should be corrected to read ''§ 201–39.104–1'' and paragraph (b)(3) is corrected by removing the correspondence symbol ''(KMR)'' and replacing it with the correspondence symbol ''(KAR)''.

§ 201–39.3304–1 [Corrected]

14. On page 61284, in the first column, in § 201–39.3304–1 is corrected by removing the correspondence symbol ''(KMA)'' and replacing it with the correspondence symbol ''(KAA)''.

Dated: February 1, 1995.

Margaret Truntich,

Director, Regulations Analysis.

[FR Doc. 95–3170 Filed 2–8–95; 8:45 am]

BILLING CODE 6820–25–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 642

[Docket No. 940710–4292; I.D. 020395A]

Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Closure of a Commercial Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure of a commercial fishery for king mackerel.

SUMMARY: NMFS closes the commercial run-around gillnet fishery for king mackerel in the exclusive economic zone (EEZ) in the Florida west coast sub-zone. This closure is necessary to protect the overfished Gulf king mackerel resource.

EFFECTIVE DATE: February 3, 1995, through June 30, 1995.

FOR FURTHER INFORMATION CONTACT: Mark F. Godcharles, 813–570–5305.

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, cero, cobia, little tunny, dolphin, and, in the Gulf of Mexico only, bluefish) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented by regulations at 50 CFR part 642 under the authority of the Magnuson Fishery Conservation and Management Act.

Catch limits recommended by the Councils and implemented by NMFS for the Gulf of Mexico migratory group of king mackerel set the commercial quota of king mackerel in the Florida west coast sub-zone at 865,000 lb (392,357 kg). That quota was further divided into two equal quotas of 432,500 lb (196,179 kg) for vessels in each of two groups by gear types—vessels fishing with run-around gillnets and those using hook and line gear.

Under 50 CFR 642.26(a), NMFS is required to close any segment of the king mackerel commercial fishery when its allocation or quota is reached, or is projected to be reached, by publishing a notification in the **Federal Register**. NMFS has determined that the commercial quota of 432,500 lb (196,179 kg) for Gulf group king mackerel for vessels using run-around gillnets in the Florida west coast sub-zone was reached on February 3, 1995. Hence, the commercial fishery for king mackerel for such vessels in the Florida west coast sub-zone is closed effective 6:00 p.m., local time, February 3, 1995, through June 30, 1995, the end of the fishing year.

The Florida west coast sub-zone extends from the Alabama/Florida boundary (87°31′06″ W. long.) to: (1) The Dade/Monroe County, Florida boundary (25°20.4′ N. lat.) from November 1 through March 31; and (2) the Monroe/Collier County, Florida boundary (25°48′ N. lat.) from April 1 through October 31.

NMFS previously determined that the commercial quota of king mackerel from the western zone of the Gulf of Mexico was reached and closed that segment of the fishery on September 24, 1994

(59 FR 49356, September 28, 1994). Consequently, with this closure the only commercial king mackerel fishery remaining open in the Gulf of Mexico EEZ is the fishery in the Florida west coast sub-zone by vessels using hook-and-line gear.

During the closure, no person aboard a vessel that has been issued a gillnet endorsement may fish for or retain king mackerel in the EEZ in the Florida west coast sub-zone.

Classification

This action is taken under 50 CFR 642.26(a) and is exempt from OMB review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 3, 1995.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–3210 Filed 2–6–95; 10:13 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 60, No. 27
Thursday, February 9, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 91–AWP–13]

Proposed Amendment to Restricted Area R–2504; Camp Roberts, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Proposed Rule; withdrawal.

SUMMARY: This action withdraws the Notice of Proposed Rulemaking (NPRM) published in the **Federal Register** on May 6, 1992. The NPRM proposed to amend the boundaries and time of designation for Restricted Area R–2504, Camp Roberts, CA. The FAA has determined that withdrawal of the proposal at this time is warranted because the Department of the Army has temporarily halted action on the proposal.

DATES: This proposed rule is withdrawn February 9, 1995.

FOR FURTHER INFORMATION CONTACT: Jim Robinson, Military Operations Program Office (ATM–420), Office of Air Traffic System Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 493–4050.

SUPPLEMENTARY INFORMATION: On May 6, 1992, a Notice of Proposed Rulemaking was published in the **Federal Register** to amend 14 CFR part 71 of the Federal Aviation Regulations to change the boundaries and time of designation for R–2504, Camp Roberts, CA (57 FR 19409).

The FAA has decided to withdraw the proposal at this time to provide the Department of the Army the opportunity to compile additional information regarding the proposal.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Withdrawal

In consideration of the foregoing, Airspace Docket No. 91–AWP–13, as published in the **Federal Register** on May 6, 1992 (57 FR 19409), is hereby withdrawn.

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

Issued in Washington, DC, on January 26, 1995.

Nancy B. Kalinowski,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 95–2736 Filed 2–8–95; 8:45 am]
BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 240 and 249

[Release No. 34–35323; File No. S7–4–95]

RIN 3235–AG28

Unlisted Trading Privileges

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rulemaking.

SUMMARY: The Securities and Exchange Commission (''Commission'') is proposing new rules and amendments to existing rules concerning unlisted trading privileges (''UTP'') in listed initial public offerings (''IPOs''). The proposed rules would reduce the period that exchanges have to wait before extending UTP to any listed IPO security, from the third trading day, to the first trade reported by the listing exchange to the Consolidated Tape. The proposed rules also would require exchanges to have rules and oversight mechanisms in place to ensure fair and orderly markets and the protection of investors with respect to UTP in the securities.

DATES: Comments should be submitted on or before March 13, 1995.

ADDRESSES: Interested persons should submit three copies of their written data, views and opinions to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., D.C. 20549, and should refer to File No. S7–4–95. All submissions will be made available for public inspection and copying at the Commission's Public Reference Room, Room No. 1024, 450 Fifth Street, N.W., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Betsy Prout, 202/942–0170, Attorney, Office of Self-Regulatory Oversight and Market Structure, Division of Market Regulation, Securities and Exchange Commission, (Mail Stop 5–1), 450 5th Street, N.W., Washington D.C. 20549.

SUPPLEMENTARY INFORMATION:

I. Background

On October 22, 1994, the Unlisted Trading Privileges Act of 1994 (''UTP Act'') became effective. The UTP Act amends Section 12(f) of the Securities Exchange Act of 1934 (''Exchange Act''). Section 12(f) governs when a national securities exchange (''exchange'') may trade a security that is not listed and registered on that exchange, *i.e.* by extending unlisted trading privileges (''UTP'') to the security. Pursuant to the UTP Act, the Commission today is proposing rules under Section 12(f).

A. Section 12(f) Prior to the UTP Act

Prior to the UTP Act, Section 12(f) required exchanges to apply to the Commission before extending UTP to a particular security.[1] An exchange application for the extension of UTP named the security (or frequently, securities) for which the applicant exchange sought Commission approval for UTP. The Commission was required to provide interested parties with at least ten days notice of the application, which the Commission accomplished by publishing each UTP application for comment in the **Federal Register** at least ten days prior to approving UTP for a security. In addition, prior to approving the UTP application, the Commission had to find that the extension of UTP to each security named, if listed and registered on another exchange (''listed security'' on a ''listing exchange''), would be consistent with the maintenance of fair and orderly markets and the protection of investors. If so, the

[1] When an exchange ''extends UTP'' to a security, the exchange allows its members to trade the security as if it were listed on the exchange. For discussions of the history of UTP in U.S. markets and Section 12(f) of the Exchange Act, *see, e.g.*, Stephen L. Parker & Brandon Becker, Unlisted Trading Privileges, 14 *Rev. Sec. Reg.* 853 (1981); and Walter Werner, Adventure in Social Control of Finance: The National Market System for Securities, 75 *Colum. L. Rev.* 1233 (1975).

Commission published an approval order in the **Federal Register**.

Section 12(f) gave interested parties an opportunity to comment and to participate in a hearing regarding the extension of UTP to any security. Pursuant to Section 12(f), the Commission processed hundreds of exchange applications for the extension of UTP each year, yet comments on the applications were extremely rare. Indeed, virtually no comments have been submitted to the Commission on a UTP application in over ten years.

As a consequence of the application, publication, and approval process, applicant exchanges had to wait several weeks before competing with listing exchanges that already were trading the securities. Moreover, while exchanges were required to await Commission approval before competing with the listing exchange, dealers trading off an exchange could trade any security immediately upon its effective registration with the Commission.[2]

As noted above, Section 12(f) also required the Commission to review each UTP application to ensure the maintenance of fair and orderly markets and the protection of investors with respect to the extension of UTP to the securities named in the application. Pursuant to this standard of review, the staff identified, over time, certain areas of particular concern as they relate to UTP. Accordingly, the staff reviewed each application to ensure, among other things, that the applicant exchange had proper trading rules in place to provide a fair and orderly market in each security named and had sufficient standards for regulatory oversight of each security to provide for the protection of investors. While Commission review of the applications led to occasional discoveries of material deficiencies and errors in the applications, the overwhelming majority of applications raised no substantive issues and over 99% of the applications were approved.

In response to the Concept Release that initiated the Market 2000 Study,[3] resulting in the Division of Market Regulation's (''Division'') report, *Market 2000: An Examination of Current Equity Market Developments*, some commenters noted that the regulatory process for UTP could be a potential area for reform.[4] Shortly after publication of the Concept Release, the Telecommunications and Finance Subcommittee of the House Committee on Energy and Commerce (''Subcommittee'') began working on draft legislation to amend Section 12(f).[5] These efforts, along with the efforts and support of the various self-regulatory organizations, ultimately led to the UTP Act.

B. Statutory Changes Under Amended Section 12(f)

The UTP Act, among other matters, removes the application, notice, and Commission approval process from Section 12(f) of the Exchange Act, except in cases of Commission suspension of UTP in a particular security on an exchange. Thus, the amendment generally allows an exchange to extend UTP to any security when it becomes listed and registered on another exchange or included in Nasdaq,[6] subject to certain limitations.

First, the UTP Act contains special provisions for the extension of UTP to any listed security that is the subject of an initial public offering (''listed IPO security'').[7] The amendment includes a temporary provision that requires exchanges to wait until the third day of trading in any listed IPO security on the listing exchange before they may allow their members to trade the security pursuant to UTP. This provision also requires the Commission to prescribe by rule or regulation, within 180 days of the enactment of the UTP Act (or before April 21, 1995), the mandatory delay (or, ''duration of the interval''), if any, that should apply to UTP extensions to listed IPO securities.[8]

Second, Section 12(f)(1)(D) provides the Commission with rulemaking authority to prescribe, by rule or regulation, additional procedures or requirements for extending UTP to any security.

Third, new Section 12(f)(2) allows the Commission summarily to suspend UTP in a security at any time within 60 days of the commencement of trading on the relevant exchange pursuant to UTP. Upon suspension, the exchange must cease trading in the security. Pursuant to Section 12(f)(2)(A)(ii), an exchange seeking to reinstate its ability to extend UTP to the security, following a Commission suspension, must file an application with the Commission. The exchange must apply pursuant to procedures that the Commission may prescribe by rule or order for the maintenance of fair and orderly markets, the protection of investors and the public interest, or otherwise in furtherance of the purposes of the

---

[2] As a technical matter, Section 12(a) limits the trading of securities on an exchange to those securities that are listed and registered on that exchange. Section 12(f), both prior to and following this amendment, makes an exemption from this requirement for securities traded pursuant to UTP. Over-the-counter (''OTC'') dealers are not subject to the Section 12(a) listing requirement because they do not transact business on an exchange.

[3] *See* Securities Exchange Act Release No. 30920 (July 14, 1992), 57 FR 32587 (''Concept Release'').

[4] *See* letter from William G. Morton, Jr., Boston Stock Exchange, John L. Fletcher, Midwest (currently Chicago) Stock Exchange, Leopold Korins, Pacific Stock Exchange, and Nicholas A. Giordano, Philadelphia Stock Exchange, to Jonathan G. Katz, Secretary, Commission, dated December 11, 1992. *See* also, Division of Market Regulation, Securities and Exchange Commission, *Market 2000: An Examination of Current Equity Market Developments* (January 1994).

[5] The Subcommittee held a hearing on the UTP Act on June 22, 1994, at which a Division representative and representatives of several self-regulatory organizations appeared and submitted written comments on the legislation. The Unlisted Trading Privileges Act of 1994 and Review of the SEC's Market 2000 Study: Hearing Before the Subcomm. on Telecommunications and Finance of the House Comm. on Energy and Commerce, 103d Cong., 2d Sess. (1994) (''UTP Hearing'').

[6] Section 12(f), as amended, also removes the application and approval requirements for exchange UTP in securities that are registered under 12(g) of the Exchange Act (generally, ''OTC securities''). Exchange extensions of UTP to OTC securities, and specifically to Nasdaq/National Market securities, are subject to limitations provided in Section 12(f) and provided in an on-going pilot program. *See* Securities Exchange Act Release No. 34371 (July 13, 1994), 59 FR 37103. While the UTP Act removed the relevant application procedures for Nasdaq stocks, UTP in OTC securities continues to be subject to the on-going pilot program and the limitations it provides. For that reason, the Commission will consider issues involved in UTP extensions to OTC securities as the Commission continues its on-going review of the operation of the pilot program.

[7] Section 12(f)(1)(B), read jointly with Section 12(f)(1)(A)(ii), as amended, provides this exception for listed IPO securities. In defining securities that fall within the exception, new subparagraphs 12(f)(1)(G)(i) and (ii) provide:

(i) a security is the subject of an initial public offering if—

(I) the offering of the subject security is registered under the Securities Act of 1933; and

(II) the issuer of the security, immediately prior to filing the registration statement with respect to the offering, was not subject to the reporting requirements of section 13 or 15(d) of this title; and

(ii) an initial public offering of such security commences at the opening of trading on the day on which such security commences trading on the national securities exchange with which such security is registered.

15 U.S.C. 78*l*(f)(1)(G).

[8] Specifically, amended Section 12(f)(1)(C) provides:

Not later than 180 days after the date of enactment of the Unlisted Trading Privileges Act of 1994, the Commission shall prescribe, by rule or regulation, the duration of the interval referred to in this subparagraph (B), if any, as the Commission determines to be necessary or appropriate for the maintenance of fair and orderly markets, the protection of investors, or otherwise in furtherance of the purposes of this title. Until the earlier of the effective date of such rule or regulation, or 240 days after such date of enactment, such interval shall begin at the opening of trading on the day on which such security commences trading on the national securities exchange with which such security is registered and end at the conclusion of the next trading day.

In short, this provision requires exchanges (until the earlier of the effective date of a Commission rule, or 240 days after the enactment of the UTP Act) to wait until the third trading day in a listed IPO security before trading the security pursuant to UTP.

Exchange Act. New Section 12(f)(2) requires public notice and Commission review of applications to reinstate UTP that has been suspended summarily by the Commission. The procedures and Commission standard of review for approval of a reinstatement application are substantially similar to the application and review process that previously preceded an exchange's initial extension of UTP to a security under former Section 12(f) and the rules thereunder.

These amendments to Section 12(f) reduce the waiting period that previously delayed exchange extensions of UTP to securities listed on other exchanges, or to certain securities traded OTC. In addition, the amendments direct the Commission to prescribe rules for UTP in listed IPO securities, and otherwise empowers the Commission to establish rules for UTP generally as the Commission deems appropriate in furtherance of the purposes of the Exchange Act.

II. Proposed Rules and Amendments to Existing Rules Pursuant to Amended Section 12(f)

As described in more detail below, the Commission is proposing two new rules and amendments to and rescissions of existing rules. Specifically, the Commission is proposing new Rule 12f–2 concerning UTP in listed IPO securities, and is soliciting comment on alternatives to the proposed rule that would be consistent with the UTP Act. The Commission also is proposing and soliciting comment on new Rule 12f–5 regarding exchange rules to ensure the maintenance of fair and orderly markets and the protection of investors for all securities traded pursuant to UTP. To provide consistency between the amendments to Section 12(f) and the rules thereunder, the Commission also is proposing to amend existing Rules 12f–1 and 12f–3 and to rescind existing Rules 12f–2 and 12f–6. Finally, the Commission is soliciting comment on whether other Commission action concerning intermarket linkages, as they affect UTP in listed securities, is necessary to facilitate the operation of the UTP Act.

A. Listed Securities That Are the Subject of an Initial Public Offering (Proposed Rule 12f–2)

As discussed above, the UTP Act generally allows exchanges to extend UTP to securities when they become listed and registered on another exchange or included in Nasdaq, except in the case of listed IPO securities. In this regard, the UTP Act establishes a temporary provision that requires exchanges to wait until the third day of trading in the security on the listing exchange before extending UTP to the security. Before April 21, 1995, the Commission must prescribe by rule or regulation the appropriate waiting period, if any, that would apply before an exchange may extend UTP to any listed IPO security following the commencement of its IPO.

The Commission is proposing new Rule 12f–2 under the Exchange Act to establish the waiting period that would govern the extension of UTP to a security that is the subject of an IPO. Proposed Rule 12f–2 would provide that an exchange may extend UTP to a listed IPO security when at least one transaction in the subject security has been effected on the listing exchange and the transaction has been reported pursuant to an effective transaction reporting plan as defined in Rule 11Aa3–1 under the Exchange Act.[9] The proposed rule, therefore, would shorten the mandatory waiting period (or ''interval,'' as it is described in the UTP Act) for UTP in listed IPO securities from two trading days, as temporarily specified by amended Section 12(f), to the time that it takes to effect and report the initial trade in the security on a listing exchange.

Rule 12f–2 would define the term ''subject security'' to mean a security that is the subject of an initial public offering, as that term is defined in Section 12(f)(1)(G) of the Exchange Act. To ensure that the proposed rule would not provide any means to circumvent other Section 12(f) objectives and requirements, the proposed rule also would provide that the extension of UTP pursuant to the rule would be subject to all the provisions set forth in Section 12(f) of the Exchange Act, as amended, and any rule or regulation promulgated thereunder, or which may be promulgated thereunder while the extension is in effect.

The Commission preliminarily believes that it is appropriate to minimize regulatory restraints on competition for trading listed IPO securities. Shortening the interval for UTP in listed IPO securities should enhance the ability of exchanges to compete for order flow in the subject securities, especially in light of the fact that OTC dealers may trade IPO securities immediately upon effective registration with the Commission. Accordingly, in the absence of a compelling reason to impose a restriction that would inhibit competition among exchanges, the Commission initially believes that competing exchanges should be able to extend UTP to a listed IPO security after the first trade in the security on the listing exchange has been effected and reported.

The Commission is proposing a one-trade interval before exchanges may extend UTP to a listed IPO security because the Commission preliminarily believes that the first transaction in an IPO, as disseminated on the consolidated tape, conveys essential information to the public concerning the pre-evaluated offering price of the security. In addition, the timing of the initial trade and commencement of trading in a new issue entail significant coordination involving the issuer, the listing exchange, and the underwriters of the public offering of the security. If competing exchanges were to allow their members to trade a listed IPO security before it initially trades on the listing exchange, it may be difficult to ensure that all the preparation for the IPO had been completed before public trading in the security commenced.

During the legislative process preceding the UTP Act, conflicting views arose among interested parties concerning the appropriate waiting period, if any, for UTP in listed IPO securities. At the UTP Hearing, testimony and evidence were presented to show the negative impact that a mandatory waiting period for UTP has on competition.[10] At the same time, however, one interested party asserted that listed IPO securities should trade in a central location for a ''short'' period of time to help ensure market efficiency immediately following an IPO, and that immediate UTP in listed IPO securities could increase the cost of raising capital for issuers.[11]

In a report to Congress on the UTP Act, the House Committee on Energy and Commerce provided guidance concerning specific matters it considered relevant to the present Commission rulemaking and resolution of the above concerns:

> The Committee expects that, in undertaking the IPO rulemaking authorized under the bill, the Commission will seek comments on the benefits associated with streamlining the regulatory process and enhancing competitive opportunities among market centers with respect to UTP in IPOs, and the identification of the negative effects if any that granting immediate UTP might

[9] 17 CFR 240.11Aa3–1 (1991).

[10] See prepared testimony of Nicholas A. Giordano, President and Chief Executive Officer, Philadelphia Stock Exchange, UTP Hearing, supra note 5.

[11] See prepared testimony of Edward A. Kwalwasser, Executive Vice President, Regulation, New York Stock Exchange, UTP Hearing, id.

have on the distribution of these securities. The Committee further expects the Commission to consider the experience of the third market trading in listed IPOs in the course of its examination of these questions. Finally, the Committee expects the markets to cooperate in providing the Commission with data regarding the nature and effect of trading activity (including, for example, any volatility effects on the security) in connection with IPO listings in order to enable the Commission to determine whether the benefits of confining early trading in IPOs to one marketplace are outweighed by the benefits of removing regulatory delays that inhibit competition among market.[12]

The Commission seeks comment on each of these matters. The Commission believes that identification and analysis of the potential harms and benefits that would result from either no waiting period, or from a longer waiting period than that proposed by the Commission, would be particularly useful in its review.

The Commission also seeks comment on the one-trade waiting period as proposed. To the extent that commenters believe a waiting period is appropriate, the Commission requests that they provide data to illustrate the potential negative effects on the pricing of an IPO. Commenters also may wish to provide an analysis of the effects of the current two-day waiting period. Finally, the Commission would be interested in receiving alternative proposed rules from commenters who believe that either no waiting period or a longer waiting period is appropriate.

B. Exchange Rules for Securities to Which Unlisted Trading Privileges are Extended (Proposed Rule 12f–5)

Section 12(f)(1)(D), as amended, authorizes the Commission to prescribe, by rule or regulation, such additional procedures or requirements for extending UTP to any security as the Commission deems necessary or appropriate for the maintenance of fair and orderly markets, the protection of investors and the public interest, or otherwise in furtherance of the purposes of the Exchange Act. Pursuant to this authority, the Commission is proposing Rule 12f–5, which would prohibit an exchange from extending UTP to any security unless the exchange has in effect a rule or rules providing for transactions in the class or type of security to which the exchange extends UTP.

This rule is intended to preserve a benefit of Commission review of UTP applications prior to the UTP Act. Previously, the Commission reviewed each UTP application to ensure that the applicant exchange had rules in place to cover the trading of the product class of the security for which the exchange applied. In general, applicant exchanges had listing rules in place that provided for transactions for most product classes of securities. Occasionally, however, an exchange would submit a UTP application to the Commission to trade a new or unusual product class of securities that had been approved for trading on the listing exchange, but had not been approved for trading on the applicant exchange.[13]

For example, the Commission would approve a proposed rule change to the Commission, pursuant to Section 19(b) of the Exchange Act, by an exchange to list and trade a new type of security. The proposed rule change established exchange rules to ensure the maintenance of fair and orderly markets in the securities and sufficient mechanisms for regulatory oversight of the named securities to provide for the protection of investors. A regional stock exchange occasionally filed a UTP application for the security without submitting a similar proposed rule change pursuant to Section 19(b) of the Exchange Act. The Commission's review procedures for UTP applications identified those instances so that necessary rules would be in place on the applicant exchange in order to ensure the maintenance of fair and orderly markets and the protection of investors.

The Commission is proposing Rule 12f–5 to require exchanges to ensure that these rules and oversight mechanisms exist on their exchanges for the relevant securities before extending UTP to the securities. The proposed rule reconfirms to exchanges their obligation to evaluate their extensions of UTP before allowing their members to trade the securities.

In soliciting comment on the proposed rule, the Commission is particularly interested in the views of market participants and other commenters concerning the need for the rule and whether it would, in practice, help ensure that an exchange has all the necessary rules in place to provide for fair and orderly markets in all securities to which the exchange extends UTP.

C. Proposed Amendments to Existing Rules 12f–1 and 12f–3, and Proposed Rescission of Existing Rules 12f–2 and 12f–6

Several of the rules prescribed under former Section 12(f) concerned the application process for extensions of UTP. The Commission is proposing to amend or rescind these rules to reflect statutory changes, and is soliciting comment on whether these proposed changes are appropriate.

First, the Commission is proposing to amend Rule 12f–1,[14] to limit its operation to an exchange's application to reinstate UTP after a Commission suspension. Section 12(f), as amended, requires an exchange to apply to the Commission for UTP if the Commission has suspended the exchange's extension of UTP to the security. The proposed amendment would require essentially the same format for applications to reinstate UTP as was required by the rule under former Section 12(f) for applications to extend UTP.

Second, the Commission is proposing to rescind existing Rule 12f–2 and remove Form 27 referred to in the rule.[15] This rule and form dealt with instances where an exchange might have been required to cease extending UTP, and to reapply for UTP, in a security that was ''changed'' immaterially for those purposes. The rule and form provide an exemption from reapplication for UTP in these cases. The Commission is proposing to rescind the rule because the application procedures, from which the rule provided an exemption, no longer exist.

Third, the Commission is proposing to rescind the last sentence of paragraph (b) of Rule 12f–3.[16] Rule 12f–3 allows the issuer of a security that is traded pursuant to UTP, or any broker or dealer who makes a market in the security, or any other person having a bona fide interest in the question of termination or suspension of UTP in the security, to apply to the Commission for the termination or suspension of UTP in the security. The Rule also identifies the categories of information that should be provided in the application, which includes the applicant's statement that it has sent a copy of the application to the exchange from which the suspension or termination is sought. Thereafter, the Rule provides that the exchange may terminate or suspend UTP in the security in accordance with its rules. Finally, the Rule requires the exchange, upon suspension or

[12] H.R. Rep. No. 626, 103d Cong., 2d Sess. (1994).

[13] Prior to the UTP Act, exchanges were not permitted to apply to the Commission for UTP in any security for which the applicant exchange had not adopted listing standards and proper trading rules, pursuant to Section 19(b) of the Exchange Act and Rule 19b–4 thereunder. Proposed Rule 12f–5 would make explicit the obligation to have the necessary rules in place before extending UTP to a specific type of security.

[14] 17 CFR 240.12f–1 (1991).

[15] 17 CFR 240.12f–2 (1991).

[16] 17 CFR 240.12f–3 (1991).

termination, promptly to file Form 28 with the Commission.

The Commission believes this final requirement no longer is necessary because exchanges are no longer required to apply to the Commission to extend UTP to a security. Thus, notifying the Commission of termination or suspension of UTP serves no purpose. The Commission, therefore, is proposing to rescind that last requirement from the Rule concerning Form 28, and to remove Form 28, in order to conform further with efforts to streamline the regulatory process concerning UTP.

Finally, the Commission is proposing to rescind Rule 12f–6.[17] This rule exempts a merged exchange from the UTP application process in certain circumstances. The exemption no longer is necessary because the waiting period that restrained exchanges from extending UTP to most securities has been eliminated by the UTP Act.

The Commission is soliciting comment on each of these proposed Commission rule changes. The Commission is interested in comments on whether the proposed amendments and rescissions accomplish the Commission's goals with respect to the amendments or rescissions. The Commission also is interested in receiving comments concerning the continued necessity of other provisions of the rules, given the recent amendment to Section 12(f) of the Exchange Act.

D. Solicitation of Comment on Structural Implications of Immediate UTP

The Commission is seeking comment on whether any Commission action is necessary under Section 12(f), in order to carry out the congressional objectives of linked markets as required by Section 11A(a)(1)(D),[18] to make changes to the consolidated quotation, trade reporting, and routing of customer and principal interest in securities that are traded pursuant to UTP, now that exchanges and linking facilities will have less time to prepare for multiple exchange market trading in the securities. The Commission is particularly interested in comments concerning any existing procedural delays that should be corrected by Commission action in order to ensure that the operation of amended Section 12(f) is not impeded.

III. Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis (''IRFA'') in accordance with 5 U.S.C. § 603 regarding the proposed rules. The following summarizes the conclusions of the IRFA.

The IRFA uses certain definitions of ''small businesses'' adopted by the Commission for purposes of the Regulatory Flexibility Act (''RFA''). As described in Section II, above, the Commission is proposing rules and changes to existing rules under Section 12(f) to comply with the UTP Act directives and to further the objectives of this recent amendment. Proposed Rule 12f–2 would require exchanges to wait, before extending UTP to such a security, until the listing exchange effects and reports the first transaction in the security.

Proposed Rule 12f–2 primarily has an impact on competitive initiatives of the self-regulatory organizations, which are not small businesses for the purposes of the RFA.[19] The proposed rules also may have some economic effect on some businesses that may be, from time to time, small businesses for the purposes of the RFA. Specifically, the proposed rule may affect the order-routing choices available to broker-dealer firms and would designate the moment at which regional exchange specialist firms may compete for order flow in any listed IPO security. Some broker-dealers and some regional specialist firms may be small businesses. The Commission believes, however, that the economic impact of the rule may not be ''significant'' and the number of ''small businesses'' that would be affected by the rule may not be ''substantial,'' as contemplated by the RFA. In this regard, the Commission notes, among other things, that listed IPO securities comprise only a fraction of the overall number of securities available for order-routing by broker-dealers and for trading by regional specialist firms, and only a small number of those firms are ''small businesses.'' Furthermore, neither small nor large businesses would be subject to reporting, recordkeeping, or other compliance requirements under the proposal.

The other proposals would restate existing standards for exchange extensions of UTP, and would amend existing rules under Section 12(f) to conform to the UTP Act and, therefore, should have no economic impact for the purposes of the RFA.

A copy of the Initial Regulatory Flexibility Analysis may be obtained by contacting Betsy Prout, Attorney, Office of Market Supervision, Division of Market Regulation, Securities and Exchange Commission, Washington, D.C. 20549, (202) 942–0170.

IV. Effects on Competition

Section 23(a)(2) of the Exchange Act[20] requires the Commission, in adopting rules under the Exchange Act, to consider any anti-competitive effects of the rules and to balance these effects against the regulatory benefits gained in furthering the purposes of the Act. As discussed in more detail above, the extension of unlisted trading privileges allows exchanges to compete with the listing exchange, other exchanges, and with dealers for order flow in the relevant securities. The rules promulgated under Section 12(f), therefore, may directly affect competition among market centers and their members. In addition, firms sending orders to the market centers for execution may also be affected by limitations that the proposed rules may place on their order-routing practices. The Commission is soliciting comment on the effect the proposed rules, and the proposed changes to existing rules, may have on exchanges, associations, their members, and order-routing firms.

List of Subjects in 17 CFR Parts 240 and 249

Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, the Commission proposes to amend Part 240 of Chapter II of Title 17 of the *Code of Federal Regulations* to read as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78w, 78x, 78*ll*(d), 79q, 79t, 80a–20, 80a–

[17] 17 CFR 240.12f–6 (1991).

[18] Section 11A(a)(1)(D) of the Exchange Act provides:

The linking of all markets for qualified securities through communication and data processing facilities will foster efficiency, enhance competition, increase the information available to brokers, dealers, and investors, facilitate the offsetting of investors' orders, and contribute to best execution of such orders.

[19] The relevant rule under the Act, 17 CFR 240.0–10, provides that, for the purposes of the RFA, ''small business'' (when referring to a broker or dealer) shall mean a broker or dealer that had total capital of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared, or if not required to be prepared, on the last business day of the preceding fiscal year. Also, ''small business'' does not include any entity that is affiliated with another entity that is not a small business.

[20] 15 U.S.C. 78w(a)(2).

23, 80a–29, 80a–37, 80b–3, 80b–4, and 80b–11, unless otherwise noted.

* * * * *

2. By amending § 240.12f–1 by revising the section heading and introductory text of paragraph (a), redesignating paragraphs (a)(5) and (a)(6) as (a)6) and (a)(7), adding paragraph (a)(5), and revising newly designated (a)(6), to read as follows:

§ 240.12f–1 Applications for permission to reinstate unlisted trading privileges.

(a) An application to reinstate unlisted trading privileges may be made to the Commission by any national securities exchange for the extension of unlisted trading privileges to any security for which such unlisted trading privileges have been suspended by the Commission, pursuant to section 12(f)(2)(A). One copy of such application, executed by a duly authorized officer of the exchange, shall be filed and shall set forth:

(1) * * *

(5) The date of the Commission's suspension of unlisted trading privileges in the security on the exchange;

(6) Any other information which is deemed pertinent to the question of whether the reinstatement of unlisted trading privileges in such security is consistent with the maintenance of fair and orderly markets and the protection of investors; and

* * * * *

3. By revising § 240.12f–2 to read as follows:

§ 240.12f–2 Extending Unlisted Trading Privileges to a Security that is the Subject of an Initial Public Offering.

(a) *General provision*—A national securities exchange may extend unlisted trading privileges to a subject security when at least one transaction in the subject security has been effected on the national securities exchange upon which the security is listed and the transaction has been reported pursuant to an effective transaction reporting plan as defined in § 240.11Aa3–1.

(b) The extension of unlisted trading privileges pursuant to this section shall be subject to all the provisions set forth in Section 12(f) of the Act (15 U.S.C. 78l(f)), as amended, and any rule or regulation promulgated thereunder, or which may be promulgated thereunder while the extension is in effect.

(c) *Definition*. For purposes of this section, the term *subject security* shall mean a security that is the subject of an initial public offering, as that term is defined in section 12(f)(1)(G) of the Act (15 U.S.C. 78*l*(f)(1)(G)).

4. By amending § 240.12f–3 by revising paragraph (b) to read as follows:

§ 240.12f–3 Termination or suspension of unlisted trading privileges.

(a) * * *

(b) Unlisted trading privileges in any security on any national securities exchange may be suspended or terminated by such exchange in accordance with its rules.

5. By adding § 240.12f–5, to read as follows:

§ 240.12f–5 Exchange Rules for Securities to which Unlisted Trading Privileges are Extended.

A national securities exchange shall not extend unlisted trading privileges to any security unless the national securities exchange has in effect a rule or rules providing for transactions in the class or type of security to which the exchange extends unlisted trading privileges.

§ 240.12f–6 [Removed]

6. By removing and reserving § 240.12f–6.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

7. The authority citation for Part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a, *et seq.*, unless otherwise noted.

§ 249.27 and 249.28 [Removed]

8. By removing § 249.27 and § 249.28.

By the Commission.

Dated: February 2, 1995.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–3175 Filed 2–8–95; 8:45 am]

BILLING CODE 8010–01–P

INTERNATIONAL TRADE COMMISSION

19 CFR Part 210

Notice of Proposed Rulemaking Concerning Post-Investigation Retention and Use of Confidential Business Information From Investigations on Unfair Practices in Import Trade

AGENCY: International Trade Commission.

ACTION: Notice of proposed rulemaking and request for comments.

SUMMARY: The Commission proposes to amend two of its final rules for investigations and related proceedings under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) to codify a proposed new policy of allowing counsel who are signatories to an administrative protective order (APO) to retain certain categories of confidential business information (CBI) from an investigation for prescribed periods and to use that CBI during the retention period for certain limited purposes.[1]

The Commission hereby solicits written comments from interested persons to aid the Commission in determining whether to adopt the proposed rules set forth in this notice.

DATES: Comments will be considered if received on or before April 10, 1995.

ADDRESSES: A signed original and 18 copies of each set of comments, along with a cover letter stating the nature of the commenter's interest in the proposed rulemaking, should be submitted to Donna R. Koehnke, Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436.

FOR FURTHER INFORMATION CONTACT: P.N. Smithey, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3061. Hearing-impaired individuals can obtain information concerning the proposed rulemaking by contacting the Commission's TDD terminal at 202–205–1810.

SUPPLEMENTARY INFORMATION:

Background

On August 1, 1994, the Commission published final rules for 19 CFR part 210 eventually to replace the interim rules currently found in 19 CFR parts 210 and 211.[2] The interim rules in 19 CFR parts 210 and 211 (1994) apply to all pending investigations and related proceedings that were instituted before September 1, 1994. The final rules, which went into effect on August 31, 1994, and will be codified in 19 CFR part 210 in 1995, apply to all investigations and related proceedings instituted on or after September 1, 1994.[3] On January 1, 1995, certain final rules were amended on an interim basis to implement the amendments to section 337 contained in the Uruguay Round Agreements Act, Pub. L. No. 103–465, 108 Stat. 4809 (1994) (URAA).[4]

Neither the interim nor the final Commission rules contain provisions governing the retention of CBI by counsel who are signatories to a section 337 APO. The Commission's traditional policy, however, has been to issue

[1] Commissioners Rohr and Newquist dissent from the Commission majority's decision to consider revising the final rules as described in this notice. See *infra n.9.*

[2] See 59 FR 39020, Part II (Aug. 1, 1994).

[3] *Id.*

[4] See 59 FR 67622 (Dec. 30, 1994).

section 337 APOs which (1) order the signatories to refrain from using CBI covered by the APO for any purpose other than the investigation, and (2) require signatories to destroy all CBI or return it to the suppliers after final termination of the investigation, (i.e., exhaustion of the appellate process), absent written consent from the suppliers to allow other uses of the CBI or to retain the CBI for a longer period). More recently, the Commission has allowed its administrative law judges (ALJs) to issue, after prior input from the parties, APOs which deviated from standard Commission practice by permitting outside counsel for the parties to retain certain CBI beyond the exhaustion of any appeals.[5]

As a result of the policy issues raised by those cases, the Commission published an advance notice of proposed rulemaking for 19 CFR part 210, on December 9, 1993.[6] The notice stated that the Commission was considering revising its rules for investigations and related proceedings under section 337 to address two subjects: (1) A prescribed policy of allowing counsel who are signatories to an APO to retain CBI from a particular investigation after that investigation has been finally terminated; and (2) the possible establishment and operation of a Commission repository for CBI, which would be accessible to counsel of record who signed the APO, in lieu of or in addition to permitting post-investigation retention of CBI by such counsel.

Comments Filed in Response to the Advance Notice of Proposed Rulemaking

In response to the advance notice of proposed rulemaking, the Commission received comments from the following organizations: (1) The ITC Trial Lawyers Association (ITCTLA); (2) the Section on International Law and Practice of the American Bar Association (ABA/SLIP); and (3) the U.S. Patent and Trademark Office (PTO). The Commission also received a joint submission from four bar groups—(1) the International Law Section of the District of Columbia Bar, (2) the ABA/SLIP, (3) the ITCTLA, and (4) the Customs and International Trade Bar Association.

No commenters favored the establishment and operation of a Commission repository in addition to or in lieu of permitting counsel to retain CBI for a prescribed period. The comments in opposition to a repository cited such factors as the cost to the taxpayers, the administrative burden to the Commission, and the lack of corresponding benefits to parties, the Commission, or the public at large.

The bar group commenters said that the rules should establish a fixed policy on post-investigation retention of CBI. They also indicated that the Commission's policy should be to permit such retention for various periods according to the nature of the document containing the CBI and the status of the investigation (or related proceeding) to which the document pertains. The bar group commenters also expressed the view that counsel should be permitted to retain all materials containing CBI at least until the date that all appeals are exhausted, since the information might be needed during the appeals and any Commission proceedings resulting from the appeals.

The joint recommendations of the bar group commenters concerning the retention of various categories of CBI were as follows:[7]

1. *All discovery materials*—Until two years after all appeals are exhausted. Thereafter, the materials would be returned to the supplier or destroyed, with written certification to each supplier and the Commission.

2. *All CBI in the possession of expert witnesses*—Until all appeals are exhausted. Thereafter, the materials would be returned to the supplier or destroyed, with written certification to each supplier and the Commission.

3. *The evidentiary record*—Until two years after all appeals are exhausted or all remedial orders have expired, whichever is later. Thereafter, the materials are to be returned to the supplier or destroyed, with written certification to each supplier and the Commission.

4. *Pleadings*—Indefinitely.

5. *Copies of confidential notices, orders, recommendations, and opinions issued by an ALJ or the Commission*—Indefinitely.

6. *Working papers, briefs, and other documents created by counsel containing information subject to an APO*—Indefinitely.

The bar group commenters' joint recommendations on post-investigation retention of specific categories of CBI made no distinction between CBI submitted by a third party and that submitted by party to the investigation. Moreover, the ITCTLA specifically argued against such a distinction, noting that elimination of the injury requirement as an element of a section 337 violation in intellectual-property based cases has diminished the role of third-party CBI for the most part, except in cases involving motions for temporary relief. The ITCTLA also argued against the promulgation of a separate rule to cover cases in which a third party objects to counsel's post-investigation retention of the third party's CBI. In such cases, the ITCTLA argued, the third party should seek, by negotiation with the parties or through the ALJ, modification of the APO under which such retention is to be permitted.

The PTO's comments in response to the advance notice of proposed rulemaking consisted of advice concerning the length of time that CBI should be entitled to confidential treatment. Specifically, the PTO suggested that materials covered by an APO should be declassified and made available for public inspection according to a declassification schedule set forth in the Commission rules. The PTO suggested that the declassification schedule be based on the age of the CBI contained in the material, instead of how recently the material was submitted.

The Commission's Responses

The Commission does not agree with the PTO's comment that materials covered by an APO should be declassified and made available for public inspection according to a declassification schedule set forth in the Commission rules based on the age of the CBI contained in the material. The Commission notes that the age of CBI is a factor which may have a bearing on the continuing validity of its confidential designation. The Commission also is cognizant, however, that age may not be the only factor. Moreover, section 337(n) and its legislative history evince a clear Congressional intent that if business information is properly designated confidential by the supplier and is treated accordingly by the Commission, the Commission is not at liberty to

[5] *See, e.g.*, Inv. No. 337–TA–334, Certain Condensers, Parts Thereof, and Products Containing Same, Including Air Conditioners for Automobiles, 58 FR 47286 (Sept. 8, 1993); Inv. No. 337–TA–331, Certain Microcomputer Memory Controllers, Components Thereof, and Products Containing Same, 58 FR 47284 (Sept. 8, 1993). The Condensers APO permitted outside counsel for the complainant and the respondents to retain the evidentiary record—including materials containing CBI—until the expiration of any remedial order issued by the Commission. The Memory Controllers APO permitted counsel to retain all materials containing CBI until the expiration of any remedial order issued in that case. Both APOs also allowed counsel to retain for an indefinite period documents (including briefs and working papers) that contained CBI and were created by the Commission, the ALJ, or counsel.

[6] 58 FR 64711 (Dec. 9, 1993).

[7] The ITCTLA originally proposed shorter retention periods for certain items than the table in this memorandum indicates. The ITCTLA subsequently joined other bar groups in the filing of a joint submission explicitly advocating longer retention periods. The Commission thus assumes that the joint submission reflects the ITCTLA's current position on the issues presented.

release that information at a later date absent the submitter's consent.[8] The Commission thus believes that it would be inappropriate to make unilateral determinations on declassification of CBI without consulting the suppliers or to adopt a Commission rule that would mandate such declassification.

The Commission also has decided against the establishment and operation of a Commission repository in lieu of or in addition to allowing post-investigation retention of CBI by counsel. The Commission shares the bar group commenters' view that little would be gained from creating such a repository and that having a CBI access system based on a repository would further entangle the Commission in enforcing APOs and would increase the burdens of handling CBI.

The Commission is considering revising the final part 210 rules, as suggested by the bar group commenters, to establish a policy of permitting the post-investigation retention and use of CBI by counsel. The Commission notes, however, that for some categories of CBI, the bar group commenters suggested, without explanation, retention periods that were two years beyond exhaustion of the appeals process or expiration of the remedial orders. The Commission notes also that some of the uses which the bar group commenters have jointly or individually proposed for CBI during the prescribed retention periods encompass uses that appear to be outside of the limitations imposed by law.

As discussed in the next section of this notice, the Commission has drafted proposed rule provisions that incorporate a retention schedule with shorter deadlines for certain kinds of CBI than the deadlines listed in the bar group commenters' joint submission. The Commission also has drafted proposed rule provisions that limit the uses to which CBI may be put during the prescribed retention periods. The Commission, however, specifically invites bar associations and other interested persons who favor the bar group commenters' proposed schedule to file comments with the Commission on the following issues:

1. The justification for the extended retention periods (i.e., the additional two years) on the bar group commenters' proposed schedule for certain materials containing CBI; and

2. The use(s) to which the CBI in those materials would be put during the extended periods.[9]

Proposed Rule Changes

To codify the retention schedule, use restrictions, and other requirements which the Commission proposes to adopt, the Commission proposes to add new provisions to final rules 210.5 and 210.34, rather than creating new rules. That approach eliminates the need to renumber the existing final rules in part 210. The new provisions which the Commission proposes to add to final rules 210.5 and 210.34 are described below.

Final Rule 210.5

Final rule 210.5, entitled ''Confidential business information,'' is the Commission's general rule for CBI in investigations and related proceedings under section 337. The Commission proposes to amend final rule 210.5 by adding a new paragraph (f) which states that materials containing CBI subject to an APO issued under final rule 210.34(a) shall be retained, used, expurgated, returned to the supplier, or destroyed as provided in final rule 210.34(e).

Final Rule 210.34

Final rule 210.34 is the general rule about APOs in section 337 investigations. The Commission proposes to amend final rule 210.34 by adding paragraph (e).

Paragraph (e)(1). Proposed paragraph (e)(1) of final rule 210.34 incorporates the following retention schedule:

1. *All discovery materials.* Until all appeals are exhausted and thereupon the materials would be subject to a return or destroy rule.

2. *All CBI in the possession of expert witnesses.* Same as for discovery materials.

3. *The evidentiary record.* Until all appeals are exhausted or all remedial orders have expired, whichever is later, and thereupon the materials would be subject to a return or destroy rule.

4. *Attorney work product.* Indefinitely, but see paragraph 7 below regarding third-party CBI. The Commission's APO enforcement responsibility would be subject to a five-year sunset rule, however. In general, the Commission would no longer be responsible for enforcing APOs five years after the exhaustion of all appeals or the expiration of all remedial orders, whichever is later. If certain information, such as trade secrets, is still confidential, the supplier of the information could request that the Commission continue to enforce the APO even though the five-year period has expired. Such a request would have to be made before the five-year period expires.

5. *Pleadings.* Same retention period and APO enforcement provisions as attorney work product, but see paragraph 7 below regarding third-party CBI.

6. *Orders, notices, initial determinations, recommended determinations, opinions, and other documents issued by an ALJ or the Commission containing CBI.* Same retention period and APO enforcement provisions as attorney work product and pleadings, but see paragraph 7 below regarding third-party CBI.

7. *Third-party CBI.* Until all appeals are exhausted or all remedial orders have expired, whichever is later. The third-party CBI would then be subject to a return or destroy rule, even if the information is contained in pleadings or work product, if the third-party suppliers so requested at the time that they submit the information.

Proposed paragraph (e)(1) also imposes—

1. 30-day deadlines for the return, destruction, or expurgation of CBI when the prescribed retention period expires, and

2. A requirement that written certification of such return, destruction, or expurgation shall be provided to suppliers and the Commission.

The Commission believes that these requirements (and the custodian requirement set forth in proposed paragraph (e)(3) of final rule 210.34) will help ensure that APO signatories comply promptly with their obligations to expurgate, return, or destroy CBI in accordance with proposed paragraph (e)(1).

Proposed paragraphs (e)(1)(iv)–(vi) of final rule 210.34 impose a 60-day deadline for motions to extend the

[8] *See*, e.g., H.R. Rep. No. 40, 100th Cong., 1st Sess. at 161–162 (1987); S. Rep. No. 71, 100th Cong., 1st Sess. at 133 (1987).

[9] Commissioner Rohr and Commissioner Newquist dissent from the majority's decision to consider adopting the proposed rules set forth in this notice.

Commissioner Rohr believes that the Commission should adhere to the traditional practice of issuing section 337 APOs which (1) order the signatories to refrain from using CBI covered by the APO for any purpose other than the investigation, and (2) require signatories to destroy all CBI or return it to the suppliers after final termination of the investigation, (i.e., exhaustion of the appellate process), absent written consent from the suppliers to allow other uses or a longer period). Commissioner Rohr also believes that the procedures contained in the proposed rules represent an unacceptable risk of unauthorized disclosure of the subject CBI.

In Commissioner Newquist's view, the Commission's rules should provide that post-investigation use and retention of CBI shall be determined by agreement of the parties, any non-party suppliers, and the presiding ALJ in each investigation.

Commission's five-year APO enforcement period (after the exhaustion of all appeals or the expiration of all remedial orders, whichever is later) with respect to pleadings, documents issued by an ALJ or the Commission, and attorney work product documents containing CBI. Sixty days should be sufficient (1) to allow nonmoving parties to respond to the motion and (2) to allow the Commission to decide the motion on or before the expiration of the five-year period.

The Commission notes one potential problem with respect to applying the aforesaid sunset provisions to attorney work product. Submitters of CBI who want the Commission to extend its enforcement of the APO beyond the five-year period are not likely to know what CBI is contained in attorney work product such as a law firm's internal legal memoranda concerning the investigation. The Commission also thinks it understandable, however, that attorneys may want to retain their work product from an investigation for future reference in matters involving similar issues. The Commission therefore solicits comments on possible solutions to this potential problem.

Paragraph (e)(2). Proposed paragraph (e)(2) of final rule 210.34 restricts the uses to which CBI may be put during the prescribed retention periods. The bar groups who commented in response to the Commission's advance notice of proposed rulemaking (and the participants and commenters in the investigations that prompted this rulemaking) [10] urged the Commission to approve retention of CBI by counsel for one or more of the uses and purposes enumerated below:

1. To provide legal advice and other legal services to clients in connection with the following matters:

To comply with a remedial or other Commission order issued in connection with the investigation or related proceeding;

To initiate—or to defend against—administrative or judicial proceedings concerning enforcement, modification, or revocation of such orders or advisory opinion proceedings; or

To enforce or avoid infringement of an intellectual property right asserted in the investigation.

2. To reduce costs, save time, minimize duplication of effort, and facilitate participation in the following kinds of proceedings:

Commission proceedings to enforce, modify, or revoke a remedial order, a consent order, or other Commission order;

Commission advisory opinion proceedings;

U.S. Customs Service proceedings to enforce or monitor compliance with an exclusion order;

Commission or Customs proceedings for the forfeiture of a bond posted by a complainant or a respondent;

Civil actions involving some or all of the same parties and subject matter as the investigation (with a view toward asserting res judicata or collateral estoppel in some kinds of cases);

Civil actions against a section 337 complainant for the filing of unwarranted section complaint; or

Civil actions for attorney malpractice in an investigation or a related proceeding.

3. To have unrestricted use of legal research and nonconfidential information in working papers, briefs, and other documents created by counsel which contain CBI.

Although section 337(n)(1) and its 1987 legislative history explicitly discuss the ''disclosure'' or ''release'' of CBI, [11] there is an implicit restriction on the use of CBI (in the absence of consent from the submitter(s)), which appears to bar some uses that the current commenters and other interested persons have suggested—namely, use of CBI in civil actions. In the absence of consent from the submitter, section 337 (n)(1) prohibits disclosure of CBI to anyone other than (1) persons granted access under a Commission APO and (2) certain categories of Government employees listed in section 337(n)(2). The categories in section 337(n)(2) previously were limited to Commission, Customs Service, and other U.S. Government personnel who are involved in the subject investigation, Presidential review of a remedial order issued in that investigation, or the administration or enforcement of an exclusion order issued in the case.[12]

Amendments to section 337(n)(1) and title 28 of the United States Code were promulgated in the URAA. Section 337(n) was amended to broaden the categories of Government employees who may have access to CBI.[13] Title 28 of the United States Code was amended to include a new section requiring the Commission to forward the administrative records of section 337 investigations to district courts for use in some, but not all, civil actions involving the same parties and subject matter as the subject investigations.[14] The URAA amendments thus do not address most of the civil action uses of CBI advocated by the commenters and other interested persons.

Proposed paragraph (e)(2) of final rule 210.34 accordingly states that CBI which is retained pursuant to paragraph (e)(1) of final rule 210.34 shall not be used during the prescribed retention period for any purposes other than those relating to the subject investigation or a related proceeding under section 337,[15] except for additional uses that are permitted by law (e.g., the new section of title 28) or provided for in a written agreement with the supplier.

Paragraph (e)(3). Proposed paragraph (e)(3) of final rule 210.34 states that each law firm whose attorneys are signatories to an APO in an investigation or a related proceeding shall designate one attorney signatory from the firm as the custodian of the CBI and the person responsible for ensuring that the requirements of proposed paragraphs (e)(1)–(e)(2) of final rule 210.34 are satisfied. It is not uncommon for attorneys to change firms and for documents containing CBI to be shipped around firms. The Commission's concern is not that the documents are likely to be lost, but that the firms may lose sight of the obligations imposed by the APO. Requiring the firm to have a custodian will reduce the likelihood of that occurring.

The Commission is cognizant that there may come a time during the prescribed retention period(s) when a law firm's custodian is no longer willing or able to serve in that capacity. If that happens, the firm always has the option of promptly returning or destroying the CBI. However, if the firm wishes to continue to retain the CBI but to change custodians, the questions are whether a change of custodianship should be permitted and, if so, how the change should be effected.

Proposed paragraph (e)(3) final rule 210.34 currently does not contain provisions governing the changing of custodians. The Commission is considering whether to revise paragraph (e)(3), however, to include such provisions. One option would be to

[10] *Condensers* and Memory Controllers (See *supra* n.5.)

[11] *See* 19 U.S.C. 1337(n)(1) and n.8 *supra*.

[12] *See* 19 U.S.C. 1337(n)(2) (1988).

[13] *See* sec. 321(a)(7) of the URAA.

[14] *Id.* at sec. 321(b)(1)(A) regarding the new 28 U.S.C. 1659(b).

[15] As noted in final rule 210.3, the term ''related proceedings'' includes sanction proceedings for the possible issuance of sanctions that would not have a bearing on the adjudication of the merits of a complaint or a motion under 19 CFR part 210, bond forfeiture proceedings, proceedings to enforce, modify, or revoke a remedial or consent order, or advisory opinion proceedings. *See* 59 FR 39040–39041 (Aug. 1, 1994), as amended at 59 FR 67626 (Dec. 30, 1994) (to be codified at 19 CFR 210.3).

revise paragraph (e)(3) to provide as follows:

1. If the firm wishes to continue to retain the CBI but to change custodians, the proposed new custodian must be a attorney in the firm who is already a signatory to the APO. The change is to be effected by serving a notice on the parties, the appropriate third-party suppliers (if any), and the Secretary.

2. If there are no lawyers left in the firm who are signatories to the APO and the firm wishes to continue to retain the CBI but to change custodians, the firm must file a motion with the Commission and serve copies on the parties and third-party suppliers. The motion must request APO signatory status for the proposed new custodian as well as leave to designate that attorney as the firm's new custodian. The motion will not be granted unless information contained in the materials held by the firm is still entitled to confidential treatment and the Commission still has a duty to enforce the governing APO with respect to that information.

The Commission is particularly interested in receiving comments on (1) whether it should revise paragraph (e)(3) of final rule 210.34 to codify a procedure for changing custodians, and, (2) if so, whether that procedure should consist of the steps enumerated above or should entail different steps.

Paragraph (e)(4). Although proposed paragraph (e)(1) establishes prescribed periods for post-investigation retention of CBI, the Commission believes that parties and third-party suppliers should not be precluded from negotiating time limits or other conditions that are more strict than the maximums set by the Commission. The Commission also believes, however, that the proposed rules should avoid imposing unnecessary burdens on the Commission for monitoring APO compliance.

Proposed paragraph (e)(4) of final rule 210.34 accordingly states that parties and third-party suppliers may agree to retention periods, uses, custodial arrangements, or other conditions which differ from those imposed by proposed paragraphs (e)(1)–(e)(3). Paragraph (e)(4) goes on to say, however, that the Commission will not be responsible for policing the retention, uses, custodial arrangements, and other conditions relating to the subject CBI in accordance with such an agreement. That policy is consistent with Commission precedent.[16]

[16] *See, e.g.,* Inv. No. 337–TA–265, Certain Dental Prophylaxis Methods, Equipment, and Components Thereof, Initial Determination at 5–6 (Jan. 22, 1988), unreviewed by the Commission, 53 FR 6709 (Mar. 2, 1988); Certain Doxorubicin and Preparations Containing Same, Inv. No. 337–TA–300, Commission Memorandum Opinion at 7–8, (May 31, 1991); Electric Power Tools, Battery Cartridges, and Battery Chargers, Commission Memorandum Opinion (July 2, 1991) at 3–4.

Paragraph (e)(4) further provides that when agreements are entered to retention periods, uses, custodial arrangements, or other conditions which differ from those imposed by proposed paragraphs (e)(1)–(e)(3), a copy of the agreement must be filed with the Commission or with the presiding ALJ (as the case may be). One purpose of this filing requirement is to give the Commission or the ALJ notice as to which of the APO provisions have been superceded by the agreement. Another purpose is to avoid placing the Commission or the ALJ in the position of having to adjudicate whether in fact an agreement was entered, if a dispute over that issue should arise at a later date.

PART 210—ADJUDICATIVE PROCEDURES

1. The authority citation for part 210 will continue to read as follows:

Authority: 19 U.S.C. 1333, 1335, and 1337.

2. For the reasons set forth in the preamble, the Commission proposes to amend § 210.5 by adding a new paragraph (f) which reads as follows:

§ 210.5 Confidential business information.

* * * * *

(f) *Disposition of confidential business information.* Materials containing confidential business information that are subject to a protective order issued under § 210.34(a) of this part shall be retained, used, expurgated, returned to the supplier, or destroyed as provided in § 210.34(e).

3. For the reasons set forth in the preamble, the Commission proposes to amend § 210.34 by adding paragraph (e) which reads as follows:

§ 210.34 Protective orders.

* * * * *

(e) *Disposition of confidential information.* (1) Unless the Commission or an administrative law judge orders or a written agreement between parties and suppliers states otherwise, confidential information acquired pursuant to a protective order issued under paragraph (a) of this section shall be expurgated, returned to the supplier, or destroyed as provided below.

(i) All discovery materials containing confidential information may be retained until all appeals are exhausted. Within 30 days thereafter, the materials shall be returned to the supplier or destroyed and written certification of such return or destruction shall be provided to each supplier and the Commission.

(ii) All materials in the possession of expert witnesses that contain confidential information may be retained until all appeals are exhausted. Within 30 days thereafter, the materials shall be returned to the supplier or destroyed and written certification of such return or destruction shall be provided to the supplier and the Commission.

(iii) All materials on the evidentiary record that contain confidential information may be retained until all appeals are exhausted or all remedial orders issued in the investigation or a related proceeding have expired, whichever is later. Within 30 days thereafter, the materials shall be returned to the supplier or destroyed and written certification of such return or destruction shall be provided to each supplier and the Commission.

(iv) Except as provided in paragraph (e)(1)(viii) of this section, all pleadings containing confidential information may be retained indefinitely. Notwithstanding such retention, the Commission shall not be responsible for enforcing the governing protective order with respect to the pleadings for more than five years after the exhaustion of all appeals or the expiration of all remedial orders, whichever is later. If information in the pleadings will still be confidential after the five-year period has expired, the supplier of the information may file a motion to have the Commission extend its enforcement of the protective order with respect to the pleadings beyond the prescribed five-year period. Such motions must be filed at least 60 days before the five-year period expires.

(v) Except as provided in paragraph (e)(1)(viii) of this section, all notices, orders, initial determinations, recommended determinations, opinions, and other documents issued by an administrative law judge or the Commission that contain confidential information may be retained indefinitely. Notwithstanding such retention, the Commission shall not be responsible for enforcing the governing protective order with respect to the aforesaid materials for more than five years after the exhaustion of all appeals or the expiration of all remedial orders, whichever is later. If information in the materials will still be confidential after the five-year period has expired, the supplier of the information may file a motion to have the Commission extend its enforcement of the protective order with respect to the materials beyond the prescribed five-year period. Such

motions must be filed at least 60 days before the five-year period expires.

(vi) Except as provided in paragraph (e)(1)(viii) of this section, all attorney work product containing confidential information may be retained indefinitely. Notwithstanding such retention, the Commission shall not be responsible for enforcing the governing protective order with respect to the work product for more than five years after the exhaustion of all appeals or the expiration of all remedial orders, whichever is later. If information that may be contained in the work product will still be confidential after the five-year period has expired, the supplier of the information may file a motion to have the Commission extend its enforcement of the protective order with respect to the work product beyond the prescribed five-year period. Such motions must be filed at least 60 days before the five-year period expires.

(vii) All confidential information supplied by third parties may be retained until all appeals are exhausted or all remedial orders have expired, whichever is later. If the third party's information appears in a document other than a pleading, a document issued by an administrative law judge or the Commission, or a document constituting attorney work product, the document shall be returned to the supplier or destroyed, and written certification of such return or destruction shall be provided to each supplier and the Commission within 30 days after all appeals are exhausted or all remedial orders have expired, whichever is later. If the third party's information appears in a pleading, a document issued by an administrative law judge or the Commission, or a document constituting attorney work product, the document may be retained indefinitely in accordance with paragraph (e)(1)(iv), (e)(1)(v), or (e)(1)(vi) of this section. However, the third party may request that its information be expurgated from the document pursuant to paragraph (e)(1)(viii).

(viii) If the third-party supplier so requests at the time that its confidential information is supplied and if the third-party supplier's confidential information is contained in pleadings, documents issued by an administrative law judge or the Commission, or attorney work product, within 30 days after all appeals are exhausted or all remedial orders have expired, whichever is later, any law firm in possession of such pleadings, documents, or work product shall expurgate the third-party supplier's confidential information from the pleadings, documents, or work product and provide written certification of the expurgation to the third-party supplier and the Commission.

(2) Except as required by law or as provided in a written agreement with the supplier, the confidential information contained in the materials enumerated in paragraph (e)(1) of this section shall not be used during the retention periods specified in paragraph (e)(1) of this section for any purposes other than those relating to the subject investigation or a related proceeding under this part.

(3) On or before the commencement of the retention periods specified in paragraph (e)(1) of this section, each law firm whose attorneys are signatories to a protective order in an investigation or a related proceeding under this part shall designate one attorney signatory from the firm as the custodian of the information and the person responsible for ensuring that the requirements of paragraphs (e)(1)–(e)(2) of this section are satisfied. Notice of the designation shall be served on the parties, the appropriate third-party suppliers (if any) and the Secretary.

(4) Parties and suppliers may agree to retention time limits, uses, custodial arrangements, or other conditions that differ from those set forth in paragraphs (e)(1)–(e)(3) of this section. When such an agreement is reached, a copy must be filed with the Commission or the presiding administrative law judge (as the case may be). Neither the Commission nor the administrative law judge shall be responsible, however, for policing the retention, uses, custodial arrangements, and other conditions relating to the subject confidential information in accordance with the agreement.

Issued: February 3, 1995.

By Order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–3140 Filed 2–8–95; 8:45 am]

BILLING CODE 7020–02–P

RAILROAD RETIREMENT BOARD

20 CFR Part 217

RIN 3220–AB08

Application for Annuity or Lump Sum

AGENCY: Railroad Retirement Board.

ACTION: Proposed rule.

SUMMARY: The Railroad Retirement Board (Board) proposes to amend its regulations to enable the Board to pay the following benefits without requiring additional applications therefor: (1) An accrued annuity due at the death of a spouse or former spouse to a railroad employee receiving an annuity based on the same earnings record; and (2) a full-time student's annuity if the student was entitled to a child's annuity in the month before the month the child attained age 18.

DATES: Comment shall be submitted on or before March 13, 1995.

ADDRESSES: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Michael C. Litt, Bureau of Law, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751–4929, TDD (312) 751–4701.

SUPPLEMENTARY INFORMATION: Section 217.8 of the Board's regulations specifies a list of benefits paid by the Board which may be paid based on a previously-filed application (*i.e.,* where a new application is not required). The proposed rule would add to that list the cases where an accrued annuity is due at the death of a spouse or former spouse to a railroad employee receiving an annuity based on the same earnings record as the spouse or former spouse and where a full-time student's annuity is payable if the student was entitled to a child's annuity in the month before the month the child attained age 18. In those cases there is no additional information contained in the applications and there is no utility to the Board in requiring additional applications. Using the earlier application reduces paperwork and the burden on persons claiming benefits.

The Board, in conjunction with the Office of Management and Budget, has determined that this is not a significant regulatory action for purposes of Executive Order 12866. Therefore, no regulatory impact analysis is required. There are no information collections associated with this rule.

List of Subjects in 20 CFR Part 217

Railroad employees, Railroad retirement.

For the reasons set out in the preamble, title 20, chapter II, part 217 of the Code of Federal Regulations is proposed to be amended as follows:

PART 217—APPLICATION FOR ANNUITY OR LUMP SUM

1. The authority citation for part 217 continues to read as follows:

Authority: 45 U.S.C. 231d and 45 U.S.C. 231f.

2. Section 217.8 is amended by adding paragraphs (t) and (u) to read as follows:

§ 217.8 When one application satisfies the filing requirement for other benefits.

* * * * *

(t) An accrued annuity due at the death of a spouse or divorced spouse if the claimant is entitled to an employee annuity on the same claim number.

(u) A full-time student's annuity if the student was entitled to a child's annuity in the month before the month the child attained age 18.

Dated: January 31, 1995.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 95–3168 Filed 2–8–95; 8:45 am]

BILLING CODE 7905–01–P

20 CFR Parts 226 and 232

RIN 3220–AA58

Computing Employee, Spouse, and Divorced Spouse Annuities

AGENCY: Railroad Retirement Board.

ACTION: Proposed rule.

SUMMARY: The Railroad Retirement Board (Board) proposes to revise its regulations dealing with the computation of retirement annuities under the Railroad Retirement Act of 1974 (Act). The Board's current regulations regarding the computation of these annuities were promulgated under the Railroad Retirement Act of 1937 and no longer reflect the computational provisions contained in the Act.

DATES: Comments must be received by the Secretary to the Board on or before March 13, 1995.

ADDRESSES: Secretary to the Board, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Thomas W. Sadler, Assistant General Counsel, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611, telephone (312) 751–4513, TTD (312) 751–4701.

SUPPLEMENTARY INFORMATION: The proposed revision to Part 226 (formerly ''Computation of Annuity'') provides the rules for computing the amount of the employee, spouse and divorced spouse annuity, under the Railroad Retirement Act of 1974. In general, the annuity consists of two components or tiers. The first tier (tier I) is a social security level benefit that is computed under social security rules based on the employee's earnings under both the railroad retirement and the social security systems and is reduced by the amount of any social security benefit payable. The second tier (tier II) is based solely on the employee's railroad earnings.

In limited circumstances the employee annuity may be increased by a ''vested dual benefit''. An employee who has completed 25 years of railroad service may also be eligible for a supplemental annuity.

The proposed rule is divided into seven (7) subparts:

Subpart A sets forth definitions and lists other regulations related to this part.

Subpart B describes the computation of the employee annuity which includes the social security level component (tier I) (proposed § 226.10), the component based solely on railroad service (tier II) (proposed § 226.11); the vested dual benefit (proposed § 226.12), and a supplemental annuity (proposed § 226.16). Proposed § 226.13 describes how cost-of-living increases apply to the annuity.

Subpart C (proposed §§ 226.30–226.35) parallels subpart B and describes the computation of the spouse and divorced spouse annuities. However, the divorced spouse is not entitled to a tier II benefit and no supplemental annuity or vested dual benefits are payable to spouses. Proposed § 226.31 explains how the spouse and divorced spouse annuity are reduced due to receipt of a public pension which was not based upon employment covered by the Social Security Act on the last day of employment.

Subpart D (proposed §§ 226.50–226.52) describes the Railroad Retirement Family Maximum which is a statutory ''cap'' placed upon the total benefits payable under the RRA. Proposed § 226.51 describes how the maximum is determined (the higher of $1,200 or an amount based upon the employee's final average monthly compensation (FAMC)). Proposed § 226.52 describes how the ''reduction amount'' is computed when the maximum is exceeded and proposed § 226.50 describes how the spouse, then the employee annuity is reduced until the total employee and spouse annuity equal the maximum. The railroad retirement maximum is computed at the employee's annuity beginning date but will be recomputed if the spouse later divorces the employee or the employee later becomes entitled to a vested dual benefit or supplemental annuity. A divorced spouse annuity is not counted in determining whether the RRA maximum is exceeded.

Subpart E (proposed §§ 226.60–226.63) explains how years of service and average monthly compensation (AMC) are determined. The tier II of the employee annuity is seven tenths of 1% (.007) times the product of an employee's years of service times his or her AMC. The spouse's tier II is 45% of the employee's tier II. See proposed § 226.11 and 226.32.

Subpart F (proposed §§ 226.70–226.74) describes the reduction required due to receipt of workers' compensation benefits. The tier I of an employee, spouse, or divorced spouse annuity is reduced if the employee is under age 65 and is entitled to a disability annuity and another periodic benefit based upon disability pursuant to some other Federal or state law or plan (proposed § 226.70). The reduction amount is first applied to the tier I of any spouse or divorced spouse annuity payable, then to the employee tier I (§ 226.71). Certain disability payments do not cause a reduction. These are listed in proposed § 226.72.

The formula for the reduction amount is found at proposed § 226.71. The reduction provided for in this part applies if the total tier I components payable to the employee and spouse (or divorced spouse) plus workers' compensation or public disability benefit exceed 80% of the employee's prior average current earnings. Proposed § 226.73 explains what events cause a change in the reduction amount. Proposed § 226.74 provides that ''average current earnings'' must be recomputed periodically to take into account inflation. The redetermined average current earnings are used only if it results in a lower reduction amount.

Subpart G of the proposed rule (§§ 226.90–226.92) explains how and when an annuity is recomputed to take into account railroad service and social security earnings after an annuitant retires.

Part 232—Spouses' Annuities is now obsolete; it is proposed to be removed.

The Board has determined that this is not a significant regulatory action under Executive Order 12866; therefore, no regulatory impact analysis is required. There are no information collections associated with this rule.

List of Subjects in 20 CFR Part 226 and Part 232

Pensions, Railroad employees, Railroad retirement.

1. For the reasons set out in the preamble, Part 226 of Title 20 of the Code of Federal Regulations (formerly ''Computation of Annuity'') is proposed to be revised as follows:

PART 226—COMPUTING EMPLOYEE, SPOUSE, AND DIVORCED SPOUSE ANNUITIES

Subpart A—General

Subpart B—Computing an Employee Annuity

Subpart C—Computing a Spouse or Divorced Spouse Annuity

Subpart D—Railroad Retirement Family Maximum

Subpart E—Years of Service and Average Monthly Compensation

Subpart F—Reduction for Workers' Compensation and Disability Benefits Under a Federal, State, or Local Law or Plan

Subpart G—Recomputation To Include Additional Railroad Service and Compensation

Authority: 45 U.S.C. 231(f)(b)(5).

PART 226—COMPUTING EMPLOYEE, SPOUSE, AND DIVORCED SPOUSE ANNUITIES

Subpart A—General

§ 226.1 Introduction.

This part explains how employee, spouse, and divorced spouse annuities are computed. It describes how to determine the years of railroad service and average monthly compensation used in computing the employee annuity rate. The railroad retirement family maximum, cost-of-living increases, and the recomputation of an annuity to include additional railroad earnings are also explained in this part.

§ 226.2 Definitions.

Except as otherwise expressly noted, as used in this part—

Annuity means a payment due an entitled individual for a calendar month and payable to him or her on the first day of the following month.

Eligible means that an individual meets all the requirements for payment of an annuity but has not yet applied for one.

Employee means an individual who is or has been in the service of an employer as defined in part 202 of this chapter.

Entitled means that an individual has applied for and has established his or her rights to benefits.

Railroad Retirement Act means the Railroad Retirement Act of 1974, as amended.

Retirement age means, with respect to an employee, spouse or divorced spouse who attains age 62 before January 1, 2000, age 65. For an employee, spouse or divorced spouse who attains age 62, after December 31, 1999, retirement age means the age provided for in section 216(l) of the Social Security Act.

Social Security Act means the Social Security Act as amended.

§ 226.3 Other regulations related to this part.

This part is closely related to part 216 of this chapter, which describes when an employee, spouse, or divorced spouse is eligible for an annuity, part 225 of this chapter, which explains the primary insurance amounts used in computing the employee, spouse and divorced spouse annuity rates, and part 229 of this chapter, which describes when and how employee and spouse annuities can be increased under the social security overall minimum. The creditable service and compensation used in determining the years of service and average monthly compensation are explained in parts 210 and 211 of this chapter. The beginning and ending dates of annuities are explained in part 218 of this chapter.

Subpart B—Computing an Employee Annuity

§ 226.10 Employee tier I.

Tier I of an employee annuity is an amount similar to the social security benefit the employee would receive based on combined railroad and social security earnings. The tier I benefit is computed as follows:

(a) A tier I PIA is computed based on combined railroad and social security earnings, as shown in § 225.11 of this chapter. This PIA is adjusted for any delayed retirement credits or cost-of-living increases, as shown in subparts D and E of part 225 of this chapter, and is reduced for receipt of a pension based upon non-covered service in accordance with section 215(a)(7) of the Social Security Act. The tier I of a disability annuity may also be adjusted for other benefits based on disability, as shown in §§ 226.70–226.74 of this part. Except in the case of an employee who retires at age 60 with 30 years of service, if the result is not a multiple of $1, it is rounded to the next lower multiple of $1. In the case of an employee who retires with an age reduced annuity based upon 30 years of service (see § 216.31 of this chapter) the tier I is not rounded until all reductions have been made.

(b) If the employee is entitled to a reduced age annuity (see § 216.31 of this chapter), the rate from paragraph (a) of this section is multiplied by a fraction for each month the employee is under retirement age on the annuity beginning date. The result is subtracted from the rate in paragraph (a) of this section. At present the fraction is 5/9 of 1% (or 1/180). If the employee retires before age 62 with at least 30 years of service, the employee is deemed age 62 for age reduction purposes and a 20% reduction is applied. This reduction remains in effect until the first full month throughout which the employee is 62, at which time the tier I is recomputed to reflect interim increases in the national wage levels and the age reduction factor is recomputed, if necessary, in accordance with this paragraph.

(c) The amount from paragraph (a) or (b) of this section is reduced by the amount of any monthly benefit payable to the employee under title II of the Social Security Act, including any social security benefit payable under a totalization agreement between the Social Security Administration and another country. The social security benefit used to reduce the tier I may be an age or disability benefit on the employee's own earnings record, a benefit based on the earnings record of another person, or the total of two types of benefits. The amount of the social security benefit used to reduce tier I is before any deduction for excess earnings. It is after any reduction for

other benefits based on disability. The result cannot be less than zero.

(d) The tier I is subject to automatic annual increases as provided for in subpart E of part 225 of this chapter.

Example: An employee born on November 3, 1919, becomes entitled to an age annuity effective October 1, 1982. Retirement age for individuals born in 1919 is age 65. He has less than 30 years of service. His tier I PIA is $712.60, which is rounded down to $712. Since the employee is 25 months under age 65 when his annuity begins, $712 is multiplied by $^{25}/_{180}$ ($^{1}/_{180}$ for each month under age 65), to produce an age reduction of $98.89, and a tier I rate after age reduction of $613.11. The employee is also entitled to a social security benefit of $190 a month. The employee's final tier I rate is $423.11.

§ 226.11 Employee tier II.

The tier II of an employee annuity is based only on railroad service. For annuities awarded after September 1981, the tier II benefit is computed as follows:

(a) The product obtained by multiplying the employee's creditable years of service by the average monthly compensation, determined as shown in subpart E of this part, is multiplied by seven-tenths of 1 percent (.007).

(b) If the employee is entitled to a vested dual benefit (see § 226.12 of this part), the result from paragraph (a) of this section is reduced by 25 percent of the vested dual benefit amount. This reduction is made before reduction of the tier II benefit for age. The result cannot be less than zero.

(c) If the railroad retirement family maximum applies, as shown in §§ 226.50–226.52 of this part, the amount from paragraph (a) or (b) of this section is reduced by the smaller of—

(1) The difference between the total railroad retirement maximum reduction amount and the reductions in the spouse and supplemental annuities; or

(2) The total tier II amount from paragraph (a) or (b) of this section.

(d) If the employee is entitled to a reduced age annuity (see § 216.31 of this chapter), the rate from paragraphs (a) through (c) of this section is reduced in the same manner as the tier I as provided for in § 226.10 of this part. In the case of an employee with 30 years of service who is entitled to a reduced age annuity (see § 216.31 of this chapter), the age reduction only applies to the tier I component; no age reduction applies to the tier II component.

(e) The total tier II amount (paragraphs (a) through (d)), is increased by 32.5 percent of the percentage increase in the cost of living increase to the tier I annuity component. Each cost-of-living increase is paid only to an employee whose annuity begins on or before the effective date of the increase. The increases are effective on the same date as any cost-of-living increase to the tier I annuity component.

§ 226.12 Employee vested dual benefit.

(a) *General.* An employee vested dual benefit is payable, in addition to tiers I and II, to an employee who meets one of the following requirements:

(1) *Employee worked in the railroad industry in 1974.* An employee who worked for a railroad in 1974 and retired after 1974 is considered vested if on December 31, 1974, he or she had both 10 years of railroad service and sufficient quarters of coverage under the Social Security Act to qualify for a social security benefit. An employee qualified on this basis is eligible for vested dual benefit amounts computed on his or her railroad and social security credits through December 31, 1974.

(2) *Employee who did not work for a railroad in 1974.* An employee who did not work in the railroad industry in 1974, but who had 25 or more years of railroad service before 1975 or a current connection with the railroad industry on December 31, 1974, as defined in part 216 of this chapter, or a current connection when he or she retired, is also considered vested under the same conditions as an employee who had worked in the railroad industry in 1974.

(3) *An employee who completed 10 years or more years of railroad service (but less than 25) before 1975 but left the industry before 1975 and did not have a current connection on December 31, 1974 or when he or she retired.* Such an employee is considered vested only if he or she had sufficient social security quarters of coverage to qualify for a social security retirement benefit as of the end of the year prior to 1975 in which he or she left the railroad industry. The vested dual benefit amount is based only on credits acquired through the last year of pre-1975 railroad service instead of through December 31, 1974.

(b) *Computation.* The employee vested dual benefit is computed as follows:

(1) The combined earnings dual benefit PIA is subtracted from the total of the railroad earnings dual benefit PIA and the social security earnings dual benefit PIA (see part 225 of this chapter for an explanation of these PIA's).

(2) The result from paragraph (b)(1) of this section is adjusted for any applicable cost-of-living increase, as shown in § 226.13 of this part.

(3) If the employee is entitled to a reduced age annuity (see § 216.1 of this chapter), the rate from paragraph (b)(2) of this section is reduced in the same manner as the tier I as provided for in § 226.10 of this part. In the case of an employee with 30 years of service who is entitled to an annuity reduced for age, the age reduction applies only to the tier I component; no age reduction applies to the vested dual benefit.

(4) The vested dual benefit payable in a given year may also be reduced for insufficient funding as shown in part 233 of this chapter.

Example: An employee born on November 3, 1919 becomes entitled to an annuity including a vested dual benefit on October 1, 1982. His combined earnings dual benefit PIA is $254.90, his railroad earnings dual benefit PIA is $93.80, and his social security earnings dual benefit PIA is $244.70. The vested dual benefit before cost-of-living increase is $83.60 ($93.80+244.70 − 254.90=83.60). A cost-of-living increase of $67.72 (81 percent of $83.60. See § 226.13 of this part) results in a vested dual benefit of $151.32. Retirement age for a person born in 1919 is age 65. Since the employee is 25 months under age 65 when the annuity begins, $151.32 is multiplied by $^{25}/_{180}$, to produce an age reduction of $21.02 and a vested dual benefit rate after age reduction of $130.30.

§ 226.13 Cost-of-living increase in employee vested dual benefit.

If the employee's annuity begins June 1, 1975 or later, a cost-of-living increase is added to the total vested dual benefit amount. This increase is based on the cost-of-living increases in social security benefits during the period from January 1, 1975, to the earlier of the date the employee's annuity begins or January 1, 1982. The increases are effective on June 1 of each year through 1981. The percentage increase for annuities that begin June 1, 1981, or later is 81 percent.

§ 226.14 Employee regular annuity rate.

The regular annuity rate payable to the employee is the total of the employee tier I, tier II, and vested dual benefit amounts, from §§ 226.10–226.12.

§ 226.15 Deductions from employee regular annuity rate.

The employee annuity as computed under this subpart may be reduced by premiums required for supplemental medicare coverage, income tax withholding, recovery of debts due the Federal government, garnishment pursuant to part 350 of the chapter and

property awards as provided for in part 295 of this chapter.

§ 226.16 Supplemental annuity.

A supplemental annuity is payable in addition to tiers I and II and the vested dual benefit to an employee who meets the requirements of § 216.41 of this chapter. The supplemental annuity is equal to $23 plus $4 for each full year of service, over 25 years of service, up to a maximum of $43. The supplemental annuity may be reduced by the railroad retirement family maximum as shown in §§ 226.50–226.52 of this part, or for the receipt of a private pension benefit as explained in part 227 of this chapter.

Subpart C—Computing a Spouse or Divorced Spouse Annuity

§ 226.30 Spouse or divorced spouse tier I.

(a) *General.* The tier I of a spouse or divorced spouse annuity is an amount similar to the social security benefit the spouse or divorced spouse would receive based on the employee's combined railroad and social security earnings. In the case of an employee who retires before age 62 with 30 years of service, the spouse tier I is simply 50% of the employee tier I until the first month throughout which both the employee and spouse are age 62 at which time the tier I is an amount similar to the social security benefit on the employee's combined railroad and social security earnings.

(b) *Reduction for other disability benefits.* The spouse or divorced spouse tier I may be adjusted for other disability benefits received by a disabled employee, as shown in §§ 226.70–226.74 of this part.

(c) *Reduction for government pension.* The amount in paragraphs (a) or (b) of this section is reduced (but not below zero) by the amount of any government pension payable on the spouse's or divorced spouse's earnings record, as described in § 226.31 of this part.

(d) *Rounding.* The last tier I rate from paragraph (a), (b) or (c) of this section 5 if not a multiple of $1, is rounded to the next lower multiple of $1. However, in cases in which the spouse is in receipt of an age reduced 60/30 annuity or in which the employee with 30 years of service began a disability annuity July 1, 1984, or later, the spouse tier I is not rounded until all reductions have been made. See § 226.10(a).

(e) *Age reduction.* If the spouse or divorced spouse is entitled to a reduced age annuity (see §§ 216.51 and 216.52 of this chapter), the rounded tier I rate from paragraph (d) of this section is multiplied by a fraction for each month the spouse or divorced spouse is under retirement age on the date the annuity begins. The result is subtracted from the rate from paragraph (d) of this section. At present the fraction is $^{25}/_{36}$ of 1% (or $^{1}/_{144}$). In the case of an employee with 30 years of service who is awarded a disability annuity on July 1, 1984, or later, where the spouse does not have a child of the employee under age 18 in care, the spouse tier I is reduced for each month the spouse is under retirement age on the date the spouse annuity begins. If the spouse is age 60 or 61, he or she is deemed to be age 62 for purposes of the age reduction. The age reduction is applied before reduction for a government pension.

(f) *Reduction for social security benefit.* The previous tier I rate, from paragraph (d) or (e) of this section, is reduced by the amount of any monthly benefit payable to the spouse or divorced spouse under title II of the Social Security Act. The social security benefit used to reduce tier I may be an age or disability benefit on the spouse's or divorced spouse's own earnings record, a benefit based on the earnings record of another person, or the total of two types of benefits. The result cannot be less than zero.

(g) *Reduction for employee annuity.* If the spouse or divorced spouse is entitled to an employee annuity on his or her own wage record, the spouse or divorced spouse tier I is reduced for the spouse's own employee annuity as follows:

(1) *Spouse.* If either the employee or the spouse had some railroad service before 1975, the previous tier I rate from paragraphs (d) through (f) of this section, whichever applies, is reduced (but not below zero) by the spouse's own employee tier I rate, as computed under § 226.10 of this part. If both the employee and spouse began railroad service after 1974, the spouse's total annuity rate, as shown in § 226.33, is reduced (but not below zero) by the spouse's own employee total annuity rate, as shown in § 226.14. These reductions are effective from the later of the date the employee or spouse annuity begins.

(2) *Divorced spouse.* The previous tier I rate from paragraphs (d) through (f) of this section, whichever applies, is reduced (but not below zero) by the divorced spouse's own employee total annuity rate as shown in § 226.14.

Example: The computation of the spouse tier I may be illustrated as follows: A railroad employee's wife who was born on September 16, 1920 becomes entitled to a spouse annuity on October 1, 1982. She is also entitled to a social security benefit of $190 a month effective October 1, 1982. Her husband's employee tier I PIA is $712.60. The spouse tier I is $356.30 (50 percent of $712.60). This is rounded down to $356. Since she is 35 months under age 65, the present retirement age when the annuity begins, $356 is multiplied by $^{35}/_{144}$, to produce an age reduction of $86.53 and a tier I rate after age reduction of $269.47. Her final tier I rate effective October 1, 1982, after reduction for social security benefits, is $79.47 ($269.47–$190.00).

§ 226.31 Reduction for public pension.

(a) The tier I annuity component of a spouse/divorced spouse annuity, as described in the preceding sections of this part, is reduced if the spouse/divorced spouse is in receipt of a public pension.

(b) *When reduction is required.* Unless the spouse or divorced spouse annuity meets one of the exceptions in paragraph (d) of this section, the tier I annuity component is reduced each month the annuitant is receiving a monthly pension from a Federal, state, or local government agency (government pension), but excluding a pension paid by a government of a foreign country, for which he or she was employed in work not covered by social security on the last day of such employment. For purposes of this section, Federal government employees are not considered to be covered by social security if they are covered for Medicare but are not otherwise covered by social security.

(c) *Payment in a lump sum.* If the government pension is not paid monthly or is paid in a lump-sum payment, the Board will determine how much the pension would be if it were paid monthly and then reduce the monthly railroad retirement annuity accordingly. The number of years covered by a lump-sum payment and thus the period when the annuity will be reduced, will generally be clear from the pension plan. If one of the alternatives to a lump-sum payment is a life annuity, and the amount of the monthly benefit for the life annuity can be determined, the reduction will be based on that monthly benefit amount. Where the period or the equivalent monthly pension benefit is not clear, it may be necessary for the Board to determine the reduction period on an individual basis.

(d) *Exceptions.* The reduction does not apply:

(1) If the annuitant is receiving a government pension based on employment for an interstate instrumentality; or

(2) If the annuitant receives or is eligible to receive a government pension

for one or more months in the period December 1977 through November 1982 and he or she meets the requirements for social security benefits that were applied in January 1977 (even though he or she did not actually claim such benefits nor become entitled to such benefits until a later month). The January 1977 requirements are, for a man, a one-half support test (see paragraph (e) of this section), and, for a woman claiming benefits as a divorced spouse, marriage for at least 20 years to the insured worker. A person is considered eligible for a government pension for any month in which he or she meets all the requirements for payment except that he or she is working or has not applied; or

(3) If the annuitant was receiving or eligible (as defined in paragraph (d)(2) of this section) to receive a government pension for one or more months before July 1983, and he or she meets the one-half support test (see paragraph (e) of this section). If the annuitant meets the exception in this paragraph but he or she does not meet the exception in paragraph (d)(2) of this section, December 1982 is the earliest month for which the reduction will not affect his benefits; or

(4) If the annuitant has been eligible for a government pension in a given month except for a requirement which delayed eligibility for such pension until the month following the month in which all other requirements were met, the Board will consider the annuitant to be eligible in that given month for the purpose of meeting one of the exceptions in paragraphs (d)(2) and (d)(3) of this section. If the annuitant meets an exception solely because of this paragraph, his or her benefits will be unreduced for months after November 1984 only.

(e) *The one-half support test.* For a man to meet the January 1977 requirement as provided in the exception in paragraph (d)(2) of this section and for a man or a woman to meet the exception in paragraph (d)(3) of this section, he or she must meet a one-half support test. One-half support is defined in part 222 of this chapter. One-half support must be met at one of the following times:

(1) If the employee upon whose compensation the spouse or divorced spouse annuity is based had a period of disability, as defined in part 220 of this chapter, which did not end before he or she became entitled to an age and service or disability annuity, the spouse/divorced spouse annuitant must have been receiving at least one-half support from the employee either—

(i) At the beginning of the employee's period of disability; or

(ii) At the time the employee became entitled to an age and service or disability annuity.

(2) If the employee upon whose compensation the spouse or divorced spouse annuity is based did not have a period of disability, as defined in part 220 of this chapter, at the time of his or her entitlement, the spouse or divorced spouse annuitant must have been receiving at least one-half support from the employee at the time the employee became entitled to an age and service or disability annuity.

(f) *Amount of reduction.* (1) If the spouse/divorced spouse annuitant becomes eligible for a government pension after June 1983, the Board will reduce (to zero, if necessary) the tier I annuity component by two-thirds of the amount of the monthly pension. If the amount of the reduction is not a multiple of 10 cents, it will be rounded to the next higher multiple of 10 cents.

(2) If the spouse/divorced spouse annuitant became eligible for a government pension before July 1983 and he or she did not meet one of the exceptions in paragraph (d) of this section, the Board will reduce (to zero, if necessary) the tier I component by the full amount of the pension for months before December 1984 and by two-thirds the amount of his or her monthly pension for months after November 1984. If the amount of the reduction is not a multiple of 10 cents, it will be rounded to the next higher multiple of 10 cents.

(g) *Reduction not applicable.* This reduction is not applied to claimants who both filed and were entitled to a spouse benefit prior to December 1977.

§ 226.32 Spouse tier II.

The spouse tier II benefit is computed as follows:

(a) The employee's tier II amount as computed under § 226.11 of this part, after any reduction for entitlement to a vested dual benefit but before reduction for the railroad retirement family maximum, is multiplied by 45 percent. The spouse tier II is recomputed if the employee's tier II rate is reduced for entitlement to a vested dual benefit after the beginning date of the spouse annuity.

(b) If tier I of a spouse annuity is reduced for the spouse's employee annuity, as provided for in § 226.30(g) of this part, the reduction is restored in tier II. The restored amount is payable on the effective date of the spouse or the employee tier I benefit, whichever is later. The previous tier II rate is increased by the restored amount, which is determined as follows:

(1) *Initial restored amount.* The restored amount is the amount by which the spouse tier I was reduced by reason of receipt of an employee annuity on the date the restored amount is first payable. The restored amount is only payable if either the employee or spouse had railroad service prior to 1975.

(2) *Recomputation of restored amount.* The restored amount is recomputed if the spouse becomes entitled to a government pension, a social security benefit, or a different type of social security benefit after the date the initial restored amount is effective. The recomputed amount is the amount by which the spouse tier I is reduced by reason of receipt of an employee annuity on the effective date of the entitlement to a government pension or social security benefit.

(3) *Cost-of-living increase in restored amount.* If an initial or recomputed restored amount is effective before the effective date of the cost-of-living increase shown in paragraph (e) of this section, the restored amount is multiplied by the percentage increase that applies. The result is added to the restored amount on the effective date of the increase for each year that the increase is payable.

(c) If the employee's tier II has been reduced pursuant to section 3(g)(2) of the Railroad Retirement Act (takeback provision) the spouse tier II is reduced by one half of the ''takeback'' in the employee tier II.

(d) If the railroad retirement family maximum applies, as shown in §§ 226.50–226.52 of this part, the spouse tier II rate, as determined in paragraphs (a) through (c) of this section, is reduced by the smaller of—

(1) The total railroad retirement maximum reduction amount; or

(2) The previous spouse tier II rate.

(e) The tier II rate, from paragraphs (a) through (d) of this section, is increased by the same percentage as the employee tier II increase described in § 226.11(e) of this part.

(f) If the spouse is entitled to a reduced age annuity (see § 216.51 of this chapter), the tier II rate, as determined in paragraphs (a) through (e) of this section is reduced in the same manner as the tier I as provided for in § 226.30(e) of this part.

Example: An employee's tier II rate is $329.63 effective October 17, 1981. The spouse rate is $148.33 (45 percent × $329.63) effective October 17, 1981. This is increased to $151.89 effective June 1, 1982 by a cost-of-living increase of 2.4 percent. The spouse is 35 months under age 65, the present retirement age,

when the annuity begins. The $151.89 rate is multiplied by 35/144 to produce an age reduction of $36.92. This is subtracted from $151.89 to produce a final rate of $114.97.

§ 226.33 Spouse regular annuity rate.

The final tier I and tier II rates, from §§ 226.30 and 226.32, are added together to obtain the total spouse regular annuity rate.

§ 226.34 Divorced spouse regular annuity rate.

The regular annuity rate of a divorced spouse is equal to his or her tier I amount. The divorced spouse is not entitled to a tier II benefit.

§ 226.35 Deductions from regular annuity rate.

The regular annuity rate of the spouse and divorced spouse annuity may be reduced by premiums required for supplemental medicare coverage, income tax withholding (spouse annuity only), recovery of debts due the Federal government, and garnishment pursuant to part 350 of this chapter.

Subpart D—Railroad Retirement Family Maximum

§ 226.50 General.

There is a monthly ceiling on total family benefits which limits the amount of certain portions of the employee and spouse annuity. This railroad retirement family maximum amount varies according to the employee's earnings in the ten-year period that ends with the year in which his or her annuity begins. If the employee and spouse annuity amounts described in § 226.52 of this part are higher than the maximum from § 226.51 of this part, first the spouse tier II, then the supplemental annuity and, finally, the employee tier II are reduced until the total annuity amount is equal to the maximum or until the spouse tier II and the employee supplemental annuity and tier II have been reduced to zero, whichever comes first. The reduction for the railroad retirement family maximum is first computed from the date the employee's annuity begins. It is recomputed if the employee's tier II rate is reduced for entitlement to a vested dual benefit. It is also recomputed if a workers' compensation or other disability benefit begins or ends, or the employee's tier I benefit or supplemental annuity begins after the beginning date of the regular employee annuity. Finally, it is recomputed if a spouse who was entitled to an annuity divorces the employee or the spouse annuity entitlement ends.

§ 226.51 Maximum monthly amount.

The railroad retirement family maximum is equal to an employee's ''final average monthly compensation'' (FAMC) up to ½ of 1/12 of the annual maximum tier I earnings as shown in part 224 of this chapter in the year the annuity begins plus 80 percent of so much of his or her FAMC as exceeds ½ of 1/12 of the tier I maximum in the year the annuity begins. For this purpose, the FAMC is determined by dividing the individual's total earnings up to the tier II earnings limit as shown in part 211 of this chapter for the two highest-earnings years out of the last 10 calendar years, including the year of retirement, by 24. The railroad retirement maximum cannot be more than the FAMC and cannot be less than $1,200.

Example: An employee's annuity begins on December 2, 1982. He has yearly earnings that exceed the tier II annual maximum of $24,300 in 1982 and $22,200 in 1981. The FAMC is the sum of the tier II maximum for 1981 and 1982 divided by 24 [($24,300 + $22,200 ÷ 24)] or $1,937.50. The maximum which may be credited to a month for tier I in 1982 is $2,700. The family maximum is $1,350 (½ of 1/12 of the annual tier I maximum) plus $470 (80% of the difference between $1,937.50 and $1,350) or $1,820.

§ 226.52 Total annuity subject to maximum.

The total annuity amount which is compared to the maximum monthly amount to determine if a reduction for the railroad retirement family maximum applies is determined by adding together the amounts in paragraphs (a) and (b) of this section. A hypothetical spouse annuity amount is included from the beginning date of the employee annuity if the spouse is not entitled to an annuity at the time the maximum calculation is made.

(a) *Employee annuity amounts.* The following amounts are added together—

(1) The employee tier I amount, effective on the date the employee's tier I benefit begins or, if later, on the date a reduction for other disability benefits begins or ends, as shown in § 226.71 of this part. This amount is before any reduction for age or social security benefits but after including any delayed retirement credits, after any reduction for other disability benefits, and after rounding; and

(2) The employee tier II rate before reduction for the railroad retirement family maximum, effective on the employee's annuity beginning date and, if later, on the date the tier II is first reduced for a vested dual benefit, as shown in § 226.11 of this part; and

(3) The initial supplemental annuity rate effective on the date the supplemental annuity begins, before any reduction for a private pension, as shown in part 227 of this chapter.

(b) *Spouse annuity amounts.* The following amounts are added together—

(1) The spouse tier I amount, which is or would be effective on the date the employee's annuity or tier I benefit begins, as shown in § 226.30. This amount is before any reduction for other disability benefits, age, or social security benefits, but after any reduction for a government pension or employee annuity; and

(2) The spouse tier II rate which is or would be effective on the employee's annuity beginning date, the date the employee's tier I benefit begins, or the date the employee's tier II rate is reduced for a vested dual benefit, as shown in § 226.11. This rate includes the restored amount but does not include any cost-of-living increase in the tier II original rate or restored amount. It is the rate before reduction for the railroad retirement family maximum or age minus any cost-of-living increases.

Subpart E—Years of Service and Average Monthly Compensation

§ 226.60 General.

The years of service and average monthly compensation used in computing an employee's tier II annuity rate are based on the employee's creditable railroad service and compensation as described in parts 210 and 211 of this chapter. In computing the average monthly compensation, the compensation for each year cannot be higher than twelve times the tier II monthly maximum creditable for that year, as described in part 211 of this chapter.

§ 226.61 Use of military service.

(a) *Claim for use of military service.* An employee is deemed to have filed a claim for the use of military service and earnings as service and compensation under the Railroad Retirement Act if—

(1) The employee indicates on the annuity application or another signed statement that he or she has military service;

(2) The employee does not specifically request that the military service be credited as wages under the Social Security Act;

(3) The military service is creditable under the Railroad Retirement Act, as shown in part 212 of this chapter; and

(4) Using the military service as railroad service and compensation would be to the employee's advantage

(the employee and his or her family would receive higher total benefits than if the military service were credited under the Social Security Act).

(b) *Effective date for use of military service.* Military service can be used as service and compensation under the Railroad Retirement Act starting with the date the annuity begins but no earlier than twelve months before the employee files an application or statement showing that he or she has military service.

§ 226.62 Computing average monthly compensation.

The employee's average monthly compensation is computed by first determining the employee's highest 60 months of railroad compensation (disregarding compensation in excess of the maximum creditable tier II compensation for that year). The total of the highest 60 months is then divided by 60 to determine the average monthly compensation.

§ 226.63 Determining monthly compensation.

(a) *Based on yearly compensation.* If Board records do not show monthly compensation for a year, the monthly compensation is determined by dividing the total compensation reported for the year by the number of months of service credited to the employee for that year.

(b) *For employee with government employment and no railroad service for 60 month period before annuity begins.*—(1) *General.* The compensation used in determining the average monthly compensation (AMC) for an employee who has not worked in the railroad industry for the 60 month period before the month the employee's annuity begins and whose major employment during that period was for a government agency listed in § 216.16 of this chapter is indexed. The compensation is indexed by multiplying it by the quotient obtained by dividing the average annual wage for the indexing year by the average annual wage for the year being indexed. If the month for which compensation is being indexed is before 1951, the average annual wage for 1951 is used.

(2) *Indexing year defined.* The indexing year is the second year before the year in which the annuity begins.

Subpart F—Reduction for Workers' Compensation and Disability Benefits Under a Federal, State or Local Law or Plan

§ 226.70 General.

For any month an employee disability annuitant is entitled to workers' compensation or a public disability benefit, the tier I benefit of the spouse or divorced spouse is reduced due to receipt of such benefits. (If both spouse and divorced spouse annuities are payable, the reduction amount is divided and applied in equal amounts to both the spouse and divorced spouse tier I benefits.) The employee tier I is reduced by the difference between the total reduction amount, described in § 226.71 of this part, and the reduction in the spouse and divorced spouse tier I benefits.

§ 226.71 Initial reduction.

(a) *When reduction is effective.* A reduction for other disability benefits begins with the first month the employee is receiving both a disability annuity and workers' compensation or a public disability benefit. The reduction ends with the month before the month in which the employee becomes 65 years old or with the month in which the workers compensation or public disability benefit ends.

(b) *Amount of reduction.* The reduction for other disability benefits equals the difference between—

(1) The total tier I rates of the employee, spouse, and divorced spouse, before any reductions (age, public pension, social security benefits, etc.) plus the monthly amount of the workers' compensation of public disability benefit; and

(2) The higher of—

(i) Eighty percent of the employee's average current earnings, as defined in this section; or

(ii) The total tier I rates, as described in paragraph (1) of this section.

Example 1: Harold is entitled to a monthly disability annuity with a tier I component of $507 and a monthly public disability benefit of $410 from the state. Eighty percent of Harold's average current earnings is $800. Because this amount is higher than Harold's tier I component, to determine the reduction for other disability benefits the Board subtracts this amount ($800) from the total of Harold's tier I component ($507) and public disability benefit ($410) which results in a reduction amount of $117 ($917–$800). This leaves Harold with a reduced tier I amount of $390 ($507–$117).

Example 2: Tom is entitled to a disability annuity with a tier I component of $560. His wife and divorced wife are both entitled to annuities with tier I components of $280 each. Total benefits are $1,120. Tom is receiving a monthly workers' compensation benefit of $500 from the state. Eighty percent of Tom's average current earnings is $820. Because the total benefit ($1,120) is higher than Tom's average current earnings, to determine the reduction for other disability benefits the Board subtracts this amount from $1,620 ($1,120 plus $500) which results in a reduction amount of $500. This means that the tier I of the spouse and divorced spouse annuity are each reduced by $250.

(c) *Average current earnings, defined.* An employee's ''average current earnings'' is the highest of—

(1) The average monthly wage (AMW) used to compute the tier I AMW PIA. (The earnings are not indexed, even if the tier I PIA which is being paid is based on average indexed monthly earnings. See part 225 of this chapter.); or

(2) One-sixtieth of the employee's total earnings covered under either the Social Security or Railroad Retirement Acts (including earnings that exceed the maximum earnings used in computing social security benefits) for the five consecutive years after 1950 in which the employee had the highest earnings. The result, if not multiple of $1, is rounded to the next lower multiple of $1; or

(3) One-twelfth of the employee's total earnings covered under either the Social Security or Railroad Retirement Acts (including earnings that exceed the maximum earnings used in computing social security benefits) for the year of highest earnings in the period which includes the year in which the employee became disabled and the five preceding years. The result, if not a multiple of $1, is rounded to the next lower multiple of $1.

§ 226.72 Benefits that do not cause a reduction.

The tier I is not reduced for the following types of benefits:

(a) A benefit paid under a law or plan that provided, on February 18, 1981, for reducing the benefit for entitlement to a disability insurance benefit under the Social Security Act.

(b) A Federal disability benefit based on service for other than a state or local government, if all or part of that service is covered under the Social Security Act.

(c) A disability benefit paid by the Federal government or a state or local government based on state or local employment, if all or substantially all of that employment is covered under the Social Security Act. ''Substantially all'' means 85 percent or more of the employment.

(d) A benefit paid by the Veteran's Administration.

(e) Private disability benefits.

(f) Amounts paid under the Federal Employers' Liability Act (FELA).

(g) Benefits based on need, such as welfare benefits or supplementary security income.

§ 226.73 Changes in reduction amount.

The reduction amount is not changed when a tier I benefit increases because of a recomputation or a general adjustment in annuity rates, such as a cost-of-living increase. However, the reduction amount may change for the following reasons:

(a) *A spouse or divorced spouse becomes entitled to a tier I benefit after the effective date of the reduction.* The reduction amount is recomputed as if the spouse or divorced spouse were entitled to a tier I benefit on the date the reduction first applied. The new reduction amount applies beginning with the date the spouse or divorced spouse tier I benefit begins.

Example: An employee became entitled to an annuity with a tier I component of $500 on May 1, 1991. He was also receiving a state disability benefit of $300 a month based on employment not covered under the Social Security Act. On June 1, 1991, the employee's tier I increased to $520.70. On October 1, 1991, the employee's wife becomes entitled to an annuity with a tier I benefit of $260.00. The tier I amount ($250) that would have been payable to the wife on May 1, 1991 (assuming she had been eligible for a benefit at that time) is used to determine the reduction for other disability benefit beginning October 1, 1991.

(b) *The tier I benefit of a spouse or divorced spouse annuity ends after the effective date of the reduction.* The new reduction amount is computed using the tier I rate to which the employee was entitled when the reduction first applied. The new reduction amount applies beginning with the month after the month in which the spouse or divorced spouse tier I benefit ends.

(c) The average current earnings are redetermined, as shown in § 226.74.

(d) *The amount of the other disability benefit changes.* The reduction amount is recomputed to use the new benefit rate beginning with the date on which the new rate is payable. Any increases in the tier I amounts which were effective after the reduction first applied are not included in computing the new reduction amount.

Example: The employee's tier I benefit is $500 on May 1, 1991, when the annuity is first reduced for other disability benefits. The tier I increases to $520 effective June 1, 1991. When the amount of the disability benefit changes on October 1, 1991, $500, not $520, is used as the employee tier I amount in recomputing the reduction amount.

§ 226.74 Redetermination of reduction.

(a) *General.* The average current earnings are redetermined in the second year after the year the reduction for other disability benefits was first applied and every third year after that. The redetermined amount is used only if it results in a lower reduction amount. The new reduction amount is effective with January of the year after the redetermination is made.

(b) *Redetermined average current earnings.* The average current earnings are redetermined by multiplying the initial average current earnings amount by—

(1) The average of the total wages (including wages that exceed the maximum used in computing social security benefits) of all persons for whom wages were reported to the Secretary of the Treasury for the year before the year of redetermination, divided by the average of the total wages reported to the Secretary of the Treasury for 1977 or, if later, the year before the year for which the reduction was first computed. If the result is not a multiple of $1, it is rounded to the next lower multiple of $1; or

(2) If the reduction was first computed before 1978, the average of all taxable wages reported to the Secretary of Health and Human Service for the first quarter of 1977, divided by the average of all taxable wages reported to the Secretary of Health and Human Services for the first quarter of the year before the year for which the reduction was first computed. If the result is not a multiple of $1, it is rounded to the next lower multiple of $1.

Subpart G—Recomputation To Include Additional Railroad Service and Compensation

§ 226.90 When recomputation applies.

An employee's annuity may be recomputed to include additional railroad service and compensation and social security wages which the employee earns after the beginning date of the employee annuity. The annuity is recomputed only if the recomputation increases the annuity rate by more than $1 a month or results in a lump-sum payment of more than $5. Before a recomputed rate can be paid, the employee must stop working in the railroad industry. A recomputed tier I component is payable beginning with January 1 of the year after the year in which the wages or compensation are earned or (provided the employee is age 62 or disabled), in the case of railroad compensation, in the year after the employee stops working in the railroad industry.

A recomputed tier II component is payable from the date the annuity is reinstated after the employee has ceased railroad work.

§ 226.91 How an employee annuity rate is recomputed.

(a) *Tier I.* A recomputation is made if any social security wages or railroad compensation for a year in which the employee returned to work are higher than the earnings for a year included in the previous computation of the tier I PIA, as shown in part 225 of this chapter. The higher earnings are used instead of the lower earnings for the earlier year to determine the average monthly wage or average indexed monthly earnings. Part 225 of this chapter describes how a PIA is recomputed.

(b) *Tier II.* The additional service is added to the years of service previously used in computing the tier II rate. The additional compensation is used to recompute the average monthly compensation, if the compensation for a month in which the employee returned to railroad service is higher than the compensation for a month used in the previous computation of the average monthly compensation. The higher monthly compensation is used instead of the lower compensation for a previous month to determine the new average monthly compensation as shown in § 226.62 of this part. The increased years of service and average monthly compensation are used in computing a new tier II rate, as shown in § 226.11 of this part.

Example: An employee receiving an annuity which began on January 1, 1992, returns to railroad service for 10 months in 1992 and 2 months in 1993. He stops work on February 20, 1993. He has earnings of $34,500.00 in 1992 and $5,200.00 in 1993. His tier II rate effective January 1, 1992, was based on 26 years (312 months) of service and an average monthly compensation of $2,995 ($179,700÷60). The additional 12 months of service increases the year of service used in computing the tier II rate to 27 (312 months+12 months=324 months÷12=27). The 1992 earnings of $34,500.00 are used instead of 1987 earnings of $32,700.00. The 1993 earnings are not used because they are lower than the earnings for previous months used in computing the average monthly compensation. The additional $1,800.00 in earnings increases the average monthly compensation to $3,025 ($179,100 +$1,800.00= $181,500.00÷ 60). The initial tier II

amount is increased from $545.09 (26×$2,995×.007) to $571.73 (27×$3,025×.007), effective with the date of annuity reinstatement, March 1, 1993.

§ 226.92 Effect of recomputation on spouse and divorced spouse annuity.

The annuity of a spouse or divorced spouse is recomputed to use the employee's recomputed tier I PIA and tier II rate, if the recomputation results in a lump-sum payment of more than $5 or an increase in the spouse or divorced spouse annuity rate of more than $1 a month. The spouse or divorced spouse annuity rate is recomputed beginning with the same date the employee's annuity rate is recomputed.

PART 232—SPOUSES' ANNUITIES—[REMOVED]

2. For the reasons set out in the preamble, Part 232— Spouses' Annuities, is proposed to be removed.

Dated: February 1, 1995.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 95–3278 Filed 2–8–95; 8:45 am]

BILLING CODE 7905–01–P

DEPARTMENT OF STATE

Bureau of International Narcotics Matters

22 CFR Part 140

[Public Notice 2159]

Prohibition on Assistance to Drug Traffickers

AGENCY: Bureau of International Narcotics Matters, Department of State.

ACTION: Proposed rule.

SUMMARY: The Bureau of International Narcotics Matters plans to issue regulations to implement Section 487 of the Foreign Assistance Act of 1961, as amended (22 U.S.C. Sec. 2291f). Section 487(a) directs the President to take all reasonable steps to ensure that assistance provided under the Foreign Assistance Act or the Arms Export Control Act is not provided to or through any individual or entity that the President knows or has reason to believe: (1) has been convicted of a violation of, or a conspiracy to violate, any law or regulation of the United States, a State or the District of Columbia, or a foreign country relating to narcotic or psychotropic drugs or other controlled substances; or (2) is or has been an illicit trafficker in any such controlled substance or is or has been a knowing assistor, abettor, conspirator, or colluder with others in the illicit trafficking of any such substance. The law further directs that regulations be issued to carry out the section and be submitted to Congress before they take effect. The proposed regulation will be set forth in a new part of the Code of Federal Regulations, 22 CFR part 140, which will establish a single governmentwide enforcement mechanism for Section 487. The proposed regulations seek to achieve rigorous statutory enforcement in a manner consistent with efficient foreign assistance program administration. They also seek to ensure protection of the procedural rights and interests of assistance recipients.

DATES: Comments due: April 10, 1995.

ADDRESSES: Send comments to: Bureau of International Narcotics and Law Enforcement Affairs, Room 7334, 2201 C Street NW., Washington, DC 20520.

FOR FURTHER INFORMATION CONTACT: William R. Brownfield, Office of International Narcotics and Law Enforcement Affairs, Department of State, 202–647–0457, or Jo Brooks, Office of the Legal Adviser, Department of State, 202–647–7324.

SUPPLEMENTARY INFORMATION: This rule will implement Section 487 of the Foreign Assistance Act of 1961, as amended (22 U.S.C. Sec. 2291f). The requirements of Section 487 are described in the Summary, above.

The procedures prescribed by these regulations apply to assistance under the Foreign Assistance Act of 1961 and the Arms Export Control Act. The regulations are set up in three Subparts: General (Subpart A, §§ 140.1–140.3); Applicability (Subpart B, § 104.4); and Enforcement (Subpart C, §§ 140.5–140.14).

The General Subpart (Subpart A) provides a statement of the regulations' purpose (§ 140.1), based upon the language of Section 487 of the Foreign Assistance Act; identifies the authorities for issuance of the regulations (§ 140.2); and defines key terms used in the regulations (§ 140.3). The broad coverage of the regulations is reflected in the definitions of drug trafficking (§ 140.3(b)), money laundering (§ 140.3(c)), and narcotics offense (§ 140.3(d)), which are intended to be comprehensive. As noted in the definition of drug trafficking, it encompasses drug-related money laundering.

Two of the key terms defined in the regulations are ''covered country'' (§ 140.3(e)) and ''covered assistance'' (§ 140.3(f)). The term ''covered country'' corresponds to those countries listed on the ''majors list,'' i.e., the list of major illicit drug producing countries and major drug-transit countries, determined annually by the President and transmitted to the appropriate Congressional committees as required by Chapter 8 of Part I of the Foreign Assistance Act. The term ''covered assistance'' is defined broadly, while excluding assessed contributions to an international organization and assistance that by operation of law is not subject to Section 487. The definition further provides that assistance in amounts less than $100,000 is excluded unless it pertains to: recipients of scholarships, fellowships, or participant training; or a covered individual or entity reasonably suspected of being or having been involved in drug trafficking. These definitions are intended to ensure rigorous application of the statutory prohibition on assistance to drug traffickers, while fostering efficient program administration.

For ease of reference, the term ''covered individual or entity'' is defined in § 140.4, where it is used, rather than in the definition section. Likewise, the term ''key individual'' is described in § 140.6(a)(3), where it is introduced.

The Applicability Subpart (Subpart B) explains the scope of the regulations. Their applicability is keyed primarily to ''covered individuals and entities'' that receive or provide direct or first-tier ''covered assistance'' and are located or providing assistance within a ''covered country.'' However, the regulations have been drafted carefully to ensure they are given their full statutory scope, i.e., that they are applied whenever an affected agency has reasonable grounds to suspect that a proposed recipient individual or entity may be or may have been involved in drug trafficking or may have been convicted of a narcotics offense (see § 140.4(c); see also §§ 140.3(f)(2), 140.7(a), 140.9(a), and 140.11). They are also applicable where a government agency providing covered assistance has specifically designated a recipient beyond the first tier (see §§ 140.4(c), 140.7(b)). Additionally, the regulations apply to individuals who receive a scholarship, fellowship, or participant training (unless the assistance is provided through a multilateral institution or international organization and the recipient has not been designated by the agency providing assistance). Further assurance that drug traffickers will not receive assistance is provided by the requirement that where an agency providing covered assistance to a multilateral institution or international

organization does not designate the assistance recipient, the agency's agreement with the multilateral institution or international organization shall stipulate that such entity is to make reasonable efforts to ensure that the assistance is not diverted in support of drug trafficking (§ 140.7(c)).

The Enforcement Subpart (Subpart C) contains an overview (§ 140.5), which outlines the Subpart's scope. The applicable review procedures, criteria to be applied in deciding whether to withhold assistance or take other measures, and procedures concerning violations identified subsequent to the obligation of funds are set forth in the Enforcement Subpart. The applicability of these procedures varies depending on the nature of the proposed recipient. The general framework is set forth in § 140.6, in the context of covered assistance to foreign government entities. Variations of that framework are set forth in separate sections for: multilateral institutions and international organizations (§ 140.7); recipients of scholarships, fellowships, and participant training (§ 140.8); non-governmental entities (§ 140.9); and intermediate credit institutions (140.10). (Note: In § 140.9 the use of the phrase ''non-governmental entity'' is meant to encompass a broader category of organizations than might be encompassed by the term ''non-governmental organization'' or its acronym, ''NGO.'' As explained in § 140.9, it includes not only private voluntary agencies and educational institutions, but also for-profit firms and any other non-governmental organization.)

The review procedures set forth in the regulations are applied by the Country Narcotics Coordinator (as defined in § 140.3(a)), who is responsible in the first instance for reviewing available information to determine whether a proposed assistance recipient is to be denied assistance or whether other measures are to be taken as a result of Section 487 of the Foreign Assistance Act (see § 140.6(a)). An agency proposing assistance is responsible for providing the Country Narcotics Coordinator with the name of each key individual within a prospective recipient entity who may be expected to control or benefit from assistance as well as other relevant information that is readily available (§ 140.6(a)(3)).

The regulations provide a two-week period, extendable if necessary for another two weeks, within which the Country Narcotics Coordinator, in consultation with the head of the agency proposing assistance or the agency head's designee, is to make a final determination whether to provide or withhold assistance or take other measures. Section 140.6(b) outlines the factors to be considered in determining whether to withhold assistance or take other measures.

Section 140.6(b)(4) further provides that it is the Assistant Secretary for International Narcotics Matters (rather than the Country Narcotics Coordinator), in consultation with affected bureaus and agencies, who shall make any decision to withhold assistance or take other measures based on information or allegations that a key individual who is a senior government official of a foreign government has been convicted of a narcotics offense or has been engaged in drug trafficking (§ 140.6(b)(4)). Personal involvement at the Assistant Secretary level is appropriate in such a case because it involves inherently sensitive foreign policy issues.

The enforcement procedures applicable to recipients of scholarships, fellowships, and participant training (§ 140.8) and U.S. and foreign non-governmental entities (§ 140.9) include a pre-approval certification process. The regulations specify that false certification may subject the signatory to U.S. criminal prosecution under 18 U.S.C. Sec. 1001. (See §§ 140.8(b), 140.9(c).) Although this penalty is described in the regulations, it is established independently by the referenced statute. The identification of a penalty in the regulations is not meant to limit the application of any criminal or civil penalty otherwise applicable.

Section 140.10 concerns the procedures applicable to intermediate credit institutions. Such institutions are to be treated as either foreign government entities or non-governmental entities, depending on the nature of the particular institution. Section 140.10 also requires that agreements with such intermediate credit institutions include a contract clause concerning a refund procedure applicable to loans exceeding $1,000 made by any intermediate credit institution.

Section 140.11 clarifies that the enforcement procedures established by §§ 140.6–140.10 are not exhaustive, but represent only the minimum applicable procedures implementing Section 487 of the Foreign Assistance Act.

The remaining provisions of the regulations, §§ 140.11–140.14, establish notification and appeal procedures. Special care has been taken to ensure that notification will not be done in a manner that would interfere with any criminal investigation that may be ongoing (§ 140.13(b)). A Country Narcotics Coordinator's decision to withhold assistance or take other measures may be appealed by the agency proposing such assistance (§ 140.12). In addition, where the prospective assistance recipient is a U.S. entity, U.S. citizen, or permanent U.S. resident, a Country Narcotics Coordinator's preliminary decision to withhold assistance is referred to the Assistant Secretary of State for International Narcotics Matters for review and action. An adverse decision affecting a U.S. entity, U.S. citizen, or permanent U.S. resident may be contested in accordance with applicable agency regulations regarding governmentwide debarment and suspension (nonprocurement) and governmentwide requirements for drug-free workplace (grants).

This amendment involves a foreign affairs function of the United States. It is exempt from review under Executive Order 12866 but has been reviewed internally by the Department to ensure consistency with the purposes thereof. It is also excluded from the procedures of 5 U.S.C. Secs. 553 and 554.

List of Subjects in 22 CFR Part 140

Drug traffic control, Foreign aid.

For the reasons set out in the preamble, 22 CFR subchapter N is proposed to be amended by adding part 140 to read as follows:

PART 140—PROHIBITION ON ASSISTANCE TO DRUG TRAFFICKERS

Subpart A—General

Subpart B—Applicability

Subpart C—Enforcement

Authority: 22 U.S.C. 2651a.

Subpart A—General

§ 140.1 Purpose.

(a) These regulations implement Section 487 of the Foreign Assistance Act of 1961, as amended (22 U.S.C. Sec. 2291f).

(b) Section 487(a) directs the President to ''take all reasonable steps'' to ensure that assistance under the Foreign Assistance Act of 1961 (FAA) and the Arms Export Control Act (AECA) ''is not provided to or through any individual or entity that the President knows or has reason to believe'':

(1) has been ''convicted of a violation of, or a conspiracy to violate, any law or regulation of the United States, a State or the District of Columbia, or a foreign country relating [to] narcotic or psychotropic drugs or other controlled substances''; or

(2) ''is or has been an illicit trafficker in any such controlled substance or is or has been a knowing assistor, abettor, conspirator, or colluder with others in the illicit trafficking in any such substance.''

§ 140.2 Authorities.

Authority to implement FAA Section 487 was delegated by the President to the Secretary of State by E.O. 12163, as amended, and further delegated by the Secretary to the Assistant Secretary for International Narcotics Matters by Delegation of Authority No. 145, dated Feb. 4, 1980 (45 FR 11655), as amended.

§ 140.3 Definitions.

The following definitions shall apply for purposes of these regulations:

(a) Country Narcotics Coordinator. The individual assigned by the chief of mission in each foreign country to coordinate United States government policies and activities within a country related to counternarcotics efforts. As determined by the State Department's Bureau of International Narcotics Matters, these responsibilities may, as necessary, be performed by another person.

(b) Drug trafficking. Any activity undertaken illicitly to cultivate, produce, manufacture, distribute, sell, finance or transport, or otherwise assist, abet, conspire, or collude with others in illicit activities relating to, narcotic or psychotropic drugs, precursor chemicals, or other controlled substances, including drug-related money laundering.

(c) Money laundering. The process whereby proceeds of criminal activity, are transported, transferred, transformed, converted, or intermingled with legally acquired funds, for the purpose of concealing or disguising the true nature, source, disposition, movement, or ownership of those proceeds. The goal of money laundering is to make funds derived from or associated with illicit activity appear legally acquired.

(d) Narcotics offense. A violation of, or a conspiracy to violate, any law or regulation of the United States, a State or the District of Columbia, or a foreign country relating to narcotic or psychotropic drugs or other controlled substances.

(e) Covered country. A country that has been determined by the President to be either a ''major illicit drug producing'' or ''major drug-transit'' country under Chapter 8 of Part I of the FAA. The list of covered countries is maintained by the State Department's Bureau of International Narcotics matters.

(f) Covered assistance. Any assistance provided by an agency of the United States government under the FAA or AECA, except that it does *not* include:

(1) Assistance that by operation of the law is not subject to FAA Section 487, including:

(i) Disaster relief and rehabilitation provided under Chapter 9 of Part I of the FAA; and

(ii) Assistance provided to small farmers when part of a community-based alternative development program under Part I or Chapter 4 of Part II of the FAA;

(2) Assistance in an amount less than $100,000, except that the procedures in § 140.8 for recipients of scholarships, fellowships, and participant training shall apply regardless of amount. However, assistance shall be deemed covered assistance regardless of amount if the agency has reasonable grounds to suspect that a covered individual or entity may be or may have been involved in drug trafficking; or

(3) Assessed contributions to an international organization.

Subpart B—Applicability

§ 140.4 Applicability.

(a) Except as otherwise provided herein or as otherwise determined by the Secretary of State or the Secretary's designee, the procedures prescribed by these regulations apply to any ''covered individual or entity,'' i.e., any individual or entity, including any foreign government entity and any U.S. or foreign non-governmental entity, that is:

(1) (i) Receiving or providing covered assistance under a direct or first-tier grant, loan, guarantee, cooperative agreement, contract, or other direct agreement with an agency of the United States; or

(ii) Receiving covered assistance in the form of a scholarship, fellowship, or participant training, except as provided in § 140.7(c); and

(2) Located in or providing assistance within a covered country.

Examples:

(1) Under a $500,000 project grant agreement with the Agency for International Development providing covered assistance, Government A enters into a $150,000 contract with Corporation X. Government A is a covered entity. However, Corporation X is *not* a covered entity because the contract is not a direct contract with an agency of the United States.

(2) Under a $1,000,000 grant from the Department of State providing covered assistance, Corporation B makes a $120,000 subgrant to University Y for the training of 12 individuals. Corporation B is a covered entity and the 12 individuals receiving participant training are covered individuals. University Y is *not* a covered entity.

(3) University C receives a $1 million regional assistance research project grant from the Agency for International Development, but only $80,000 is provided for research in covered countries. University C is not a covered entity. (However, if $100,000 or more were provided for research in a covered country or countries, then University C would be a covered entity.)

(b) For purposes of § 140.4(a), where a government agency providing covered assistance specifically designates a recipient of such assistance, the recipient shall be deemed a covered individual or entity.

(c) Unless otherwise determined by the Secretary of State or the Secretary's designee, these regulations do not apply to assistance to or through individuals and entities in non-covered countries. However, an affected agency shall apply these regulations if the agency has reasonable grounds to suspect that an individual or entity located in or providing covered assistance in a non-covered country may be or may have been involved in drug trafficking or may have been convicted of a narcotics offense.

Subpart C—Enforcement

§ 140.5 Overview.

This subpart sets forth the enforcement procedures applicable pursuant to § 140.4 to the various types of covered individuals and entities with respect to covered assistance. Section 140.6 establishes the procedures applicable to foreign government entities, including any such entity that is covered by the definition of a ''foreign state'' set forth in the Foreign Sovereign Immunities Act, 28 U.S.C. Sec. 1603(a). Section 140.7 establishes the procedures applicable to multilateral institutions and international organizations. Section 140.8 establishes the procedures applicable to recipients of scholarships and fellowships and participant trainees. Section 140.9 establishes the procedures applicable to non-governmental entities. Section 140.10

sets forth additional procedures applicable to intermediate credit institutions. Sections 140.11 through 140.14 contain general provisions related to the enforcement process.

§ 140.6 Foreign government entities.

(a) *Review procedures.* (1) The Country Narcotics Coordinator shall be responsible for establishing a system for reviewing available information regarding narcotics offense convictions and drug trafficking of proposed assistance recipients under this section and, except under the circumstances described in § 140.6(b)(4), determining whether a proposed recipient is to be denied such assistance or other measures are to be taken as a result of the application of FAA Section 487.

(2) Prior to providing assistance to or through a proposed recipient, the head of the agency providing the assistance, or the agency head's designee, shall provide the Country Narcotics Coordinator in the country in which the proposed recipient is located or, as appropriate, where assistance is to be provided, the information specified in § 140.6(a)(3) in order that the Country Narcotics Coordinator may carry out his or her responsibilities under these regulations.

(3) In each case, the agency proposing the assistance shall provide to the Country Narcotics Coordinator the name of each key individual within the entity who may be expected to control or benefit from assistance as well as other relevant identifying information (e.g., address, date of birth) that is readily available. If a question arises concerning who should be included within the group of key individuals of an entity, the head of the agency providing the assistance, or the agency head's designee, shall consult with the Country Narcotics Coordinator, and the final decision shall be made by the Country Narcotics Coordinator.

(4) Within fourteen calendar days after receiving the name of a proposed recipient and other relevant information, the Country Narcotics Coordinator shall determine whether any available information may warrant withholding assistance or taking other measures under these regulations, based on the criteria set forth in § 140.6(b). If, during that period, the Country Narcotics Coordinator determines that available information does not so indicate, he or she shall notify the proposing agency that the assistance may be provided to the proposed recipient.

(5) If, during the initial fourteen-day period, the Country Narcotics Coordinator determines that information exists that may warrant withholding assistance or taking other measures under these regulations, then the Country Narcotics Coordinator shall have another fourteen calendar days to make a final determination whether to provide or withhold the assistance or take such other measures.

(b) *Criteria to be applied.* (1) A decision to withhold assistance or take other measures shall be based on knowledge or a reasonable belief that the proposed recipient individual or entity, or one or more key individuals within a proposed recipient entity, during the past ten years, has:

(i) Been *convicted* of a narcotics offense as defined in these regulations; or

(ii) Been *engaged* in drug trafficking, regardless of whether there has been a conviction.

(2) Factors that may support a decision to withhold assistance or take other measures based on the belief that the proposed recipient has been engaged in drug trafficking during the past ten years when there has been no conviction of such an offense may include, but are not limited to, the following:

(i) Admission of participation in such activities;

(ii) A long record of arrests for drug-trafficking with an unexplained failure to prosecute by the local government;

(iii) Several reliable and corroborative reports.

(3) If the Country Narcotics Coordinator determines that a key individual (as described in § 140.6(a)(3)) within a proposed recipient entity has been convicted of a narcotics offense or has been engaged in drug trafficking under the terms of these regulations, the Country Narcotics Coordinator must then decide whether withholding assistance or taking other measures in connection with the entity itself is warranted. This decision shall be made in consultation with the head of the agency proposing the assistance, or the agency head's designee. In making this determination, the Country Narcotics Coordinator shall take into account:

(i) The extent to which such individual would have control over assistance received;

(ii) The extent to which such individual could benefit personally from the assistance;

(iii) The degree to which financial or other resources of the entity itself have been used to support drug trafficking; and

(iv) Whether such individual has acted alone or in collaboration with others associated with the entity.

(4) A decision to withhold assistance or to take other measures based on information or allegations that a key individual who is a senior government official of the host nation has been convicted of a narcotics offense or has been engaged in drug trafficking shall be made by the Assistant Secretary for International Narcotics Matters in consultation with the affected bureaus and other interested agencies. For purposes of these regulations, ''senior government official'' includes host nation officials at or above the vice minister level, heads of host nation law enforcement agencies, and general or flag officers of the host nation armed forces. In making the decision whether to withhold assistance or take other measures because of information or allegations that a senior government official of the host nation has engaged in drug trafficking, the criteria set forth in §§ 140.6(b)(2) and (3) shall apply.

(c) *Violations identified subsequent to obligation.* The foregoing procedures require a review before funds are obligated. If, however, subsequent to an obligation of funds an assistance recipient is found to have been convicted of a narcotics offense or to have been engaged in drug trafficking (e.g., the head of a recipient entity changes during the course of an activity and the new head is found to have been engaged in drug trafficking), appropriate action should be taken, including, if necessary, termination of the assistance. Agreements shall be written to permit termination of assistance in such circumstances.

§ 140.7 Multilateral institutions and international organizations.

Assistance provided to or through multilateral institutions or international organizations is subject to these regulations as follows:

(a) Where the government agency providing assistance has reasonable grounds to suspect that a recipient multilateral institution or international organization may be or may have been involved in drug trafficking, the agency shall apply the provisions of § 140.6.

(b) Where the government agency providing assistance designates the recipient of assistance from the multilateral institution or international organization and the designated recipient is a covered individual or entity, the agency shall apply the provisions of these regulations that would apply if the assistance were provided directly to the designated recipient.

(c) Where the government agency providing assistance does not designate the recipient of assistance from the

multilateral institution or international organization, these regulations do not apply to such recipients of assistance, except that the agency's agreement with the multilateral institution or international organization shall stipulate that such entity is to make reasonable efforts to ensure that the assistance is not diverted in support of drug trafficking.

Example:

The State Department provides $600,000 to the United Nations for the United Nations Drug Control Program, specifically designating that Government D receive $150,000 and Corporation E receive $60,000 for programs in a covered country. Individuals who will receive training are not specifically designated by the State Department. The United Nations is a covered entity based on § 140.4(a)(1)(i); Government D is a covered entity based on §§ 140.4(b) and 140.7(b); Corporation E is not a covered entity under §§ 140.4(b) and 140.7(b) because it has been designated to receive less than $100,000 in assistance. Participant trainees are not covered individuals because they fall under the exception contained in § 140.7(c) (see also § 140.4(a)(1)(ii)).

§ 140.8 Recipients of scholarships, fellowships, and participant training.

(a) Procedures. Individuals who are located in a covered country and who are proposed recipients of scholarships, fellowships, or participant training are subject to the review procedures, criteria, and procedures concerning violations identified subsequent to obligation set forth in § 140.6. Such review of recipient individuals is in addition to the provisions applicable to the entity providing the assistance.

(b) Certifications. Individuals who are located in a covered country and who are proposed recipients of scholarships, fellowships, or participant training shall also be required to certify prior to approval that, within the last ten years, they have not been convicted of a narcotics offense, have not been engaged in drug trafficking, and have not knowingly assisted, abetted, conspired, or colluded with others in drug trafficking. False certification may subject the assistance recipient to U.S. criminal prosecution under 18 U.S.C. Sec. 1001 and to withdrawal of assistance under these regulations.

§ 140.9 Non-governmental entities.

(a) Procedures. Section 140.9 applies to private voluntary agencies, educational institutions, for-profit firms, or any other non-governmental entity. A non-governmental entity that is not organized under the laws of the United States shall be subject to the review procedures and criteria set forth in §§ 140.6(a) and (b). A non-governmental entity that is organized under the laws of the United States shall not be subject to such review procedures and criteria. However, an affected agency shall follow such procedures if the agency has reasonable grounds to suspect that a proposed U.S. non-governmental entity or a key individual of such entity may be or may have been involved in drug trafficking or may have been convicted, within the last ten years, of a narcotics offense. Procedures set forth in § 140.6(c) concerning violations identified subsequent to obligation shall apply to both U.S. and foreign non-governmental entities.

Examples:

(1) A $100,000 grant to a covered U.S. university for participant training would not be subject to the review procedures and criteria in §§ 140.6(a) and (b). However, a proposed participant would be subject to the review procedures and criteria in §§ 140.6 (a) and (b) as part of the agency's approval process.

(2) A $100,000 grant to a covered foreign private voluntary agency for participant training would be subject to the review procedures and criteria in §§ 140.6(a) and (b). In addition, each proposed participant would be subject to the review procedures and criteria in §§ 140.6(a) and (b) as part of the agency's approval process.

(b) Refunds. A clause shall be included in grants, contracts, and other agreements with both U.S. and foreign non-governmental entities requiring that assistance provided to or through such an entity that is found to have been engaged in drug trafficking, as defined in these regulations, shall be subject to refund.

(c) Certifications. Prior to approval of covered assistance, key individuals (as described in § 140.6(a)(3)) in both U.S. and foreign non-governmental entities shall be required to certify that, within the last ten years, they have not been convicted of a narcotics offense, have not been engaged in drug trafficking and have not knowingly assisted, abetted, conspired, or colluded with others in drug trafficking. False certification may subject the signatory to U.S. criminal prosecution under 18 U.S.C. Sec. 1001.

§ 140.10 Intermediate credit institutions.

(a) Treatment as Non-Governmental Entity or as a Foreign Government Entity. Intermediate credit institutions (''ICIs'') shall be subject to either the procedures applicable to foreign government entities or those applicable to non-governmental entities, depending on the nature of the specific entity. The Assistant Secretary for International Narcotics Matters or the Assistant Secretary's designee, in consultation with the head of the agency proposing the assistance or the agency head's designee, shall determine (consistent with the definition of ''foreign state'' set forth in the Foreign Sovereign Immunities Act, 28 U.S.C. Sec. 1603(a) and made applicable by § 140.5) whether the ICI will be treated as a non-governmental entity or a foreign government entity.

(b) Refunds. In addition to measures required as a consequence of an ICI's treatment as a non-governmental entity or a foreign government entity, a clause shall be included in agreements with all ICIs requiring that any loan greater than $1,000 provided to an individual or entity found to have been convicted of a narcotics offense or engaged in drug trafficking, as defined in these regulations, shall be subject to refund or recall.

§ 140.11 Minimum enforcement procedures.

Sections 140.6 through 140.10 represent the minimum procedures that each agency is required to apply in order to implement FAA Section 487. Under individual circumstances, however, additional measures may be appropriate. In those cases, agencies are encouraged to take additional steps, as necessary, to ensure that the statutory restrictions are enforced.

§ 140.12 Interagency appeal procedures.

If the agency proposing the assistance disagrees with a determination by the Country Narcotics Coordinator to withhold assistance or take other measures, the head of the agency, or the agency head's designee, may request that the determination be reviewed by the Assistant Secretary of State for International Narcotics Matters in coordination with other affected bureaus and agencies. The assistance shall continue to be withheld pending resolution of the appeal.

§ 140.13 Notification to foreign entities and individuals.

(a) Unless otherwise determined under § 140.13(b), if a determination has been made that assistance to a foreign entity or individual is to be withheld, suspended, or terminated under these regulations, the agency administering such assistance shall so inform the affected entity or individual. Except as the agency administering such assistance and the Country Narcotics Coordinator may otherwise determine, the entity or individual shall be notified solely of the statutory basis for withholding assistance.

(b) Before such notification, the Country Narcotics Coordinator shall be responsible for determining that notification would not interfere with an on-going criminal investigation. If an

investigation is underway, the Country Narcotics Coordinator, in consultation with the investigating agency, shall determine whether notification is appropriate or whether other action should be taken.

§ 140.14 Notification to and opportunity to contest for U.S. entities and individuals.

(a) If the Country Narcotics Coordinator makes a preliminary decision that evidence exists to justify withholding assistance to a U.S. entity, U.S. citizen, or permanent U.S. resident, the matter shall be referred immediately to the Assistant Secretary of State for International Narcotics Matters for appropriate action, to be taken in coordination with the agency proposing the assistance.

(b) If a determination has been made that assistance is to be withheld, suspended, or terminated under these regulations, the Assistant Secretary of State for International Narcotics Matters, or the Assistant Secretary's designee, shall notify the affected U.S. entity, U.S. citizen, or permanent U.S. resident and provide such entity or individual with an opportunity to contest the action in accordance with the provisions of applicable agency regulations regarding governmentwide debarment and suspension (nonprocurement) and governmentwide requirements for drug-free workplace (grants) (for example, regulations set forth in 22 CFR part 137 (State Department) or 22 CFR part 208 (Agency for International Development)).

Dated: February 1, 1995.

Robert S. Gelbard,

Assistant Secretary for International Narcotics Matters.

[FR Doc. 95–3279 Filed 2–8–95; 8:45 am]

BILLING CODE 4710–17–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TN–118–1–6083b; TN–101–1–5718b; TN–110–2–6569b; FRL–5151–7]

Approval and Promulgation of Implementation Plans: Approval of Revisions to Tennessee Regulations

AGENCY: Environmental Protection Agency (EPA)

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the state implementation plan (SIP) revision submitted by the State of Tennessee for the purpose of adding Stage II vapor recovery regulations to the Nashville nonattainment area. In the final rules section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rational for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: To be considered, comments must be received by March 13, 1995.

ADDRESSES: Written comments should be addressed to:

Alan Powell, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365.

Copies of the material submitted by Tennessee may be examined during normal business hours at the following locations:

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Environmental Protection Agency, Region 4 Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365.

Tennessee Department of Environment and Conservation, L & C Annex, 9th Floor, 401 Church Street, Nashville, Tennessee 37243.

Nashville-Davidson County Bureau of Environmental Health Services, Metropolitan Health Department, 311–23rd Avenue, North, Nashville, Tennessee 37203.

FOR FURTHER INFORMATION CONTACT: Alan Powell, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365.

The telephone number is 404/347–3555 extension 4209. Reference file TN118–1–6083.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: January 6, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 95–3212 Filed 2–8–95; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 761

[OPPTS–66019A; FRL–4935–5]

RIN 2070–AB20

Polychlorinated Biphenyls (PCBs); Manufacturing, Processing, and Distribution in Commerce Exemptions; Notice of Informal Hearing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Informal Hearing.

SUMMARY: On December 6, 1994, EPA's Office of Pollution Prevention and Toxics published a proposed rule with respect to 19 petitions for exceptions to the general prohibitions on the manufacture, import, processing, and distribution in commerce of PCBs under the Toxic Substances Control Act (TSCA). EPA has received a request for a hearing on four of the petitions that seek an exemption to allow the importation of PCBs from Canada for disposal in the United States. EPA will hold a half-day informal public hearing in the Washington, DC area on the four petitions. This notice announces the time and location of that hearing.

DATES: The hearing will take place on Monday, March 6, 1995, from 9:00 a.m. to 1:00 p.m. Written requests to participate in the hearing must be received on or before February 24, 1995. If reply comments are submitted, they must be received on or before March 20, 1995.

ADDRESSES: The hearing will be held at EPA Headquarters, 401 M St., SW., Washington, DC, in the Washington Information Center (WIC), conference room number 17 from 9 am to 1 pm. Three copies of the request to participate in the informal hearing, identified with the docket number OPPTS–66019A must be submitted to: OPPT Document Control Officer, Attn: TSCA Docket Receipts (7407), Office of Pollution Prevention and Toxics, Rm. G–99, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. See SUPPLEMENTARY INFORMATION for the type of information that must be included in the request and who may participate. Requests for a waiver to participate in the informal hearing by those

organizations that did not file main comments must be sent to EPA Headquarters Hearing Clerk, Mail Code 1900, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Rm. E–543B, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551, FAX: (202) 554–5603 (document requests only).

SUPPLEMENTARY INFORMATION: TSCA section 3(c)(3) prohibits the manufacture, import, processing, and distribution in commerce of PCBs in most situations unless EPA grants an exemption from the prohibition by rulemaking. 15 U.S.C. 2605(e)(3). On December 6, 1994, EPA published a proposed rule addressing 19 petitions for exemptions from the TSCA section 6(e)(3) prohibition (59 FR 62875). EPA also announced that it would conduct an informal hearing upon request. EPA received a request for a hearing from S.D. Myers on EPA's proposed decision on their four petitions which seek an exemption from the prohibition on importing PCBs from Canada for disposal in the United States. EPA will hold an informal hearing on its proposed decision to deny these four petitions on March 6, 1995. In general, the procedures that govern rulemaking, including informal hearings, with respect to petitions for exemptions from the TSCA section 6(e)(3) prohibitions are specified in 40 CFR part 750, subparts A through C. Subpart B specifies the procedures that govern rulemaking for petitions seeking exemptions to manufacture and import PCBs. The procedures in that subpart govern the March 6 informal hearing and subsequent rulemaking activities involving the Myers' petitions. The following notice summarizes those procedures. Participants and commenters are advised to consult 40 CFR part 750, subpart B for greater detail.

Each person or organization desiring to participate in the informal hearing shall file a written request to participate with the OPPT Document Control Officer (see ADDRESSES above). The request shall be received on or before February 24, 1995 (40 CFR 750.18(a)).

The request shall include: (1) A brief statement of the interest of the person or organization in the proceeding; (2) a brief outline of the points to be addressed; (3) an estimate of the time required (not to exceed 15 minutes); and (4) if the request comes from an organization, a nonbinding list of the persons to take part in the presentation. An organization that has not filed main comments on the rulemaking will not be allowed to participate in the hearing, unless a waiver of this requirement is granted by the Record and Hearing Clerk (see ADDRESSES above) or the organization is appearing at the request of EPA or under subpoena (40 CFR 750.18(b)). A panel of EPA employees shall preside at the hearing, and one panel member will chair the proceedings. The panel may question any individual or group participating in the hearing on any subject relating to the rulemaking. Cross-examination will normally not be permitted at this stage. However, persons in the hearing audience may submit questions in writing for the hearing panel to ask the participants, and the hearing panel may, at their discretion, ask these questions (40 CFR 750.19). See 40 CFR 750.19 and 750.7(c) for the rule governing the submission of additional material by the hearing participants.

After the close of the hearing, any participant in the hearing may submit a written request for cross-examination. The request shall be received by EPA no later than 1 week after a full transcript of the hearing becomes available (to determine when the transcript is available, interested persons may contact the Environmental Assistance Division (see FOR FURTHER INFORMATION CONTACT above)). See 40 CFR 750.20 and 750.8 for a description of the information that shall be included in such a request.

Interested persons may file reply comments. Reply comments shall be received on or before March 20, 1995, and shall be restricted to comments on: (1) other comments; (2) material in the hearing record; and (3) material which was not and could not possibly have been available to the commenting party a sufficient time before main comments were due on February 6, 1995. (40 CFR 750.15). Extensions of time for filing reply comments may be granted pursuant to 40 CFR 750.4(c).

Reply comments and a transcript of the hearing will be placed in the Nonconfidential Information Center as part of the rulemaking record for the proposed rule (docket number OPPTS–66019A). A full list of these materials is available for inspection and copying in the TSCA Nonconfidential Information Center from 12 noon to 4 p.m. However, any information claimed as Confidential Business Information (CBI) that is part of the record for this rulemaking is not available for public review. A public version of the record, from which information claimed as CBI has been excluded, is available for inspection. The address for the TSCA Docket Receipts appears under the **ADDRESSES** section of this notice.

List of Subjects in 40 CFR Part 761

Environmental protection, Hazardous substances, Labeling, Polychlorinated biphenyls, Reporting and Recordkeeping requirements.

Dated: February 2, 1995.

Joseph S. Carra,

Acting Director, Office of Pollution Prevention and Toxics.

[FR Doc. 95–3297 Filed 2–8–95; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 8360

[CA–050–1220–00–24–1A]

Supplemental Shooting Regulations

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule; extension of comment period.

SUMMARY: Supplemental Shooting Regulations affecting developed recreational areas/sites and undeveloped Bureau of Land Management administered public lands (that are not closed to shooting) within the Ukiah District was published in the **Federal Register**, Volume 60, number 3, pages 1791 and 1792, Thursday January 5, 1995 with a 30-day comment period expiring on February 6, 1995.

In response to public requests, the comment period is being extended for an additional 30 days.

DATES: The period for the submission is hereby extended until March 6, 1995. Comments postmarked after this date will not be considered as part of the decision making process on issuance of the supplemental regulations.

ADDRESSES: Comments should be sent to the Ukiah District Manager, Bureau of Land Management, 2550 N. State Street, Ukiah, California 95482.

FOR FURTHER INFORMATION CONTACT: Patrick Hagan, Ranger, Ukiah District Office, (707) 468–4000.

Dated: January 31, 1995.

Eric W. Natti,

Acting District Manager.

[FR Doc. 95–3273 Filed 2–8–95; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF DEFENSE

48 CFR Parts 45 and 52

Federal Acquisition Regulation; Government Property

AGENCY: Department of Defense.

ACTION: Notice of public meeting.

SUMMARY: On September 16, 1994, (59 FR 47583) the Director of Defense Procurement, Department of Defense, announced an initiative to rewrite the Federal Acquisition Regulation (FAR) part 45, Government Property, to make it easier to understand and to minimize the burdens imposed on contractors and contracting officers. The Director of Defense Procurement is providing a forum for an exchange of ideas and information with government and industry personnel by holding public meetings, soliciting public comments, and publishing notices of the public meetings in the **Federal Register**. The next public meeting is scheduled for March 9, 1995, and March 10, 1995. Prior to the public meeting, interested parties may obtain the agenda of discussion topics and drafts of the materials that will be discussed at the public meetings.

DATES: *Public Meetings.* A public meeting will be conducted at the address shown below from 9:30 a.m. to 5:00 p.m., local time, on March 9, 1995; and from 10:00 a.m. to 1:00 p.m., local time, on March 10, 1995.

Draft Materials. Drafts of the materials to be discussed at the public meetings on March 9 and 10 will be available at the Defense Acquisition Regulations Directorate by March 1, 1995.

Statements. Statements for presentation at the public meeting should be submitted to the address below on or before March 7, 1995.

ADDRESSES: *Draft Materials.* Interested parties may obtain drafts of the materials to be discussed at the March 9 and 10 public meetings from Linda W. Neilson, Defense Acquisition Regulations Directorate, Crystal Square 4, Suite 200, 1745 Jefferson Davis Highway, Arlington, Virginia, 22202

Public Meeting. The public meeting will be held in Suite 114, 1111 Jefferson Davis Highway, Crystal Gateway North (West Tower), Arlington, Virginia 22202. Individuals wishing to attend the meeting, including individuals wishing to make presentations on the topics scheduled for discussion, should contact Mrs. Linda W. Nelson, DAR Directorate, Attn: IMD 3D139, PDUSD (A&T)DP/DAR, 3062 Defense Pentagon, Washington DC 20301–3062. FAX (703) 602–0350. Please cite File 94–H028 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Mrs. Linda W. Neilson, telephone (703) 602–0131.

SUPPLEMENTARY INFORMATION:

Background

The notice of public hearing dated September 16, 1994 (59 FR 47583) invited interested parties to provide written suggestions or comments. Twenty-two commentors provided approximately 500 comments across a broad range of topics. As a result of discussions at the January 25, 1995, public meeting, the first seven discussion topics have been identified as follows—(1) draft deviation from current FAR tracking requirements for Government property valued at $1,500 or less; (2) draft revisions to the FAR Part 45 definitions; (3) legislative initiative to permit negotiated sales of low value Government property to holding contractors; (4) revisions to the current FAR policy on furnishing Government property; (5) revisions to FAR 52.245–17, Special Tooling; (6) issues relating to disposal of low value Government property; and (7) establishing the value of Government property for the purpose of determining appropriate rental charges. Additional discussion topics will be identified at future public meetings.

At the March 9 and 10 public meeting, interested parties are invited to present statements on (1) draft legislation permitting negotiated sales of low value Government property to holding contractors, (2) revisions to FAR 52.245–17, Special Tooling, (3) disposal of Government property, and (4) establishing the value of Government property for the purpose of determining appropriate rental charges.

Claudia L. Naugle,

Executive Editor, Defense Acquisition Regulations Directorate.

[FR Doc. 95–3221 Filed 2–8–95; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 424

[I.D. 082694A]

Endangered and Threatened Species; Notice of Public Hearing On Reclassification of Snake River Spring/Summer Chinook Salmon and Snake River Fall Chinook Salmon

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public hearings.

SUMMARY: On December 28, 1994, NMFS issued a proposed rule to reclassify Snake River spring/summer and Snake River fall chinook salmon (*Oncorhynchus tshawytscha*) as endangered, a change from the previous threatened status, under the Endangered Species Act of 1973 (ESA). NMFS is announcing two public hearings on this proposed action.

DATES: The hearings are scheduled as follows:

1. February 23, 1995, 7 p.m. to 9:30 p.m., Boise, ID.

2. February 24, 1995, 7 p.m. to 9:30 p.m., Portland, OR.

ADDRESSES: Comments on the proposed rule should be sent to Garth Griffin at Environmental and Technical Services Division, NMFS, Northwest Region, 525 NE Oregon Street, Suite 500, Portland, OR 97232–2737. The hearings will be held at the following locations:

1. Boise—National Interagency Fire Center, 3833 S. Development Ave., (basement of Training Center Building), Boise, ID 83705.

2. Portland—Federal Complex, 911 NE 11th Ave., (first floor, West Side), Portland, OR 97232.

FOR FURTHER INFORMATION CONTACT: Garth Griffin, 503/230-5430.

SUPPLEMENTARY INFORMATION: Department of Commerce ESA implementing regulations state that the Secretary of Commerce ''shall promptly hold at least one public hearing if any person so requests within 45 days of publication of a proposed regulation to list * * *a species'' (50 CFR 424.16 (c)(3)). A public hearing on the proposed listing provides the opportunity for the public to give comments and to permit an exchange of information and opinion among interested parties.

In response to a request by Mr. Mark Malkoski for a public hearing, NMFS

announces that hearings on the proposed reclassification of Snake River spring/summer and fall chinook salmon will be held. The public hearings will occur near the end of the public comment period for the proposed rule (February 26, 1995).

Dated: February 6, 1995.

P.A. Montanio,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 95–3330 Filed 2–7–95; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register

Vol. 60, No. 27

Thursday, February 9, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 94–139–1]

Receipt of Petition for Determination of Nonregulated Status for Genetically Engineered Cotton

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has received a petition from the Monsanto Company seeking a determination of nonregulated status for cotton lines genetically engineered for insect resistance. The petition has been submitted in accordance with our regulations concerning the introduction of certain genetically engineered organisms and products. In accordance with those regulations, we are soliciting public comments on whether these genetically engineered cotton lines present a plant pest risk.

DATES: Written comments must be received on or before April 10, 1995.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 94–139–1, Animal and Plant Health Inspection Service, Policy and Program Development, Regulatory Analysis and Development, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 94–139–1. A copy of the petition and any comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing access to that room to inspect the petition or comments are asked to call in advance of visiting at (202) 690–2817.

FOR FURTHER INFORMATION CONTACT: Dr. Keith Reding, Biotechnologist, Animal and Plant Health Inspection Service, Biotechnology, Biologics, and Environmental Protection, Biotechnology Permits, 4700 River Road Unit 147, Riverdale, MD 20737–1237. The telephone number for the agency contract will change when agency offices in Hyattsville, MD, move to Riverdale, MD, during February. Telephone: (301) 436–7612 (Hyattsville); (301) 734–7612 (Riverdale). To obtain a copy of the petition, contact Ms. Kay Peterson at (301) 436–7601 (Hyattsville) or (301) 734–7601 (Riverdale).

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, ''Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests,'' regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered ''regulated articles.''

The regulation in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. Paragraphs (b) and (c) of § 340.6 describe the form that a petition for determination of nonregulated status must take and the information that must be included in the petition.

On November 4, 1994, APHIS received a petition (APHIS Petition No. 94–308–01p) from the Monsanto Company of St. Louis, MO, requesting a determination of nonregulated status under 7 CFR part 340 for a cotton line designated as 531, genetically engineered to produce an insecticidal protein for resistance to lepidopteran insect pests. On January 10, 1995, Monsanto amended the petition to add two additional lines designated as 757 and 1076. The three cotton lines, 531, 757, and 1076, are trademarked by Monsanto as Bollagard™ Cotton Lines. The Monsanto petition states that the subject cotton lines 531, 757, and 1076, should not be regulated by APHIS because they do not present a plant pest risk.

As described in the petition, the subject cotton lines were developed to produce an insect control protein derived from the common soil bacterium Bacillus thuringiensis subsp. kurstaki (*Btk*). This genetically engineered insect control protein is nearly identical (differing in only 6 of 1,178 nonessential amino acids) to one of the proteins encoded by the cryIA(c) gene. This protein is naturally produced by *Btk* and found in commercial microbial *Btk* formulations registered as pesticides with the Environmental Protection Agency (EPA). According to Monsanto, the protein is highly selective in controlling such lepidopteran cotton pests as cotton bollworm, tobacco budworm, and pink bollworm, and is expressed at a consistent level in the cotton plant throughout the growing season. The expression of this insect control protein is regulated by a promoter and terminating sequence. The promotors were either the 35S sequence derived from the cauliflower mosaic virus or a promoter from an alternate source. Terminating sequences used were either the 7S 3′ non-translated region of the soybean alpha subunit of the beta-conglycinin gene or the E9 3′ sequence from the pea ribulose-1,5,-bisphosphate carboxylase, small subunit (rbcS).

The subject cotton lines also contain the nptII gene from the prokaryotic transposon Tn5 which encodes the enzyme neomycin phosphotransfease II. The expression of this gene in the subject cotton lines is regulated by the 35S promoter, as described above, and the nontranslated 3′ region of the nopaline synthase gene derived from the plant pathogen Agrobacterium tumefaciens. The expression of this enzyme in the subject cotton lines allows for selective growth of transgenic plant cells on the antibiotic kanamycin during plant tissue culture. These genes were stably transferred into the genome of cotton plants using A. tumefaciens-mediated transformation utilizing a binary, single-border plant expression vector.

Monsanto's cotton lines 531, 757, and 1076 are currently considered regulated articles under the regulations in 7 CFR part 340 because they contain gene sequences (vectors, promoters, and

terminators) derived from plant pathogenic sources. In cotton growing locations throughout the United States, cotton line 531 was evaluated under 5 APHIS permits issued between 1991 and 1993, and cotton lines 757 and 1076 were tested under 6 APHIS permits or notifications in 1993 and 1994. After reviewing Monsanto's permit applications for field trials of cotton lines 531, 757, and 1076, APHIS determined that the vectors and other elements were disarmed and that the trials, which were conducted under conditions of reproductive and physical containment or isolation, would not present a risk of plant pest introduction or dissemination.

In the Federal Plant Pest Act, as amended (7 U.S.C. 150aa et seq.), ''plant pest'' is defined as ''any living stage of: Any insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, other parasitic plants or reproductive parts thereof, viruses, or any organisms similar to or allied with any of the foregoing, or any infectious substances, which can directly or indirectly injure or cause disease or damage in any plants or parts thereof, or any processed, manufactured or other products of plants.'' APHIS views this definition very broadly. The definition covers direct or indirect injury, disease or damage not just to agricultural crops, but also to plants in general, for example, native species, as well as to organisms that may be beneficial to plants, for example, honeybees, rhizobia, etc.

These genetically engineered cotton lines are also currently subject to regulation by other agencies. The EPA is responsible for the regulation of pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (7 U.S.C. 136 et seq.). FIFRA requires that all pesticides, including insecticides, be registered prior to distribution or sale, unless exempt by EPA regulation. Accordingly, Monsanto has submitted to EPA an application for a conditional registration for a transgenic plant pesticide containing the new active ingredient Btk delta endotoxin protein as produced by the cryIA(c) gene and its controlling sequences. On September 29, 1994, EPA announced receipt of this application (EPA File Symbol 524–UTI) in the **Federal Register** (59 FR 49663, OPP–30373; FRL–4913–5).

Under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), pesticides added to raw agricultural commodities generally are considered to be unsafe unless a tolerance or exemption from tolerance has been established. Foods containing unsafe pesticides are deemed to be adulterated. Residue tolerances for pesticides are established by EPA under the Federal Food, Drug, and Cosmetic Act; the Food and Drug Administration (FDA) enforces the tolerances set by the EPA. Monsanto has also submitted to the EPA a pesticide petition (PP 4F4331) proposing to amend 40 CFR part 180 to establish a tolerance exemption for residues of the plant pesticide active ingredient Btk delta endotoxin protein as produced by the cryIA(c) gene and its controlling sequences. On September 14, 1994, EPA announced receipt of this petition in the **Federal Register** (59 FR 47136–47137, PF–605; FRL–4904–7). Consistent with the ''Coordinated Framework for Regulation of Biotechnology'' (51 FR 23302–23350, June 26, 1986), APHIS and the EPA are coordinating their reviews of these genetically engineered cotton lines to avoid duplication and assure that all relevant issues are addressed.

The FDA published a statement of policy on foods derived from new plant varieties in the **Federal Register** on May 29, 1992 (57 FR 22984–23005). The FDA statement of policy includes a discussion of the FDA authority for ensuring food safety under the Federal Food, Drug, and Cosmetic Act, and provides guidance to industry on the scientific considerations associated with the development of foods derived from new plant varieties, including those plants developed through the techniques of genetic engineering.

In accordance with § 340.6(d) of the regulations, we are publishing this notice to inform the public that APHIS will accept written comments regarding the Petition for Determination of Nonregulated Status from any interested person for a period of 60 days from the date of this notice. The petition and any comments received are available for public review, and copies of the petition may be ordered (see the **ADDRESSES** section of this notice).

After the comment period closes, APHIS will review the data submitted by the petitioner, all written comments received during the comment period, and any other relevant information. Based on the available information, APHIS will furnish a response to the petitioner, either approving the petition in whole or in part, or denying the petition. APHIS will then publish a notice in the **Federal Register** announcing the regulatory status of Monsanto's genetically engineered cotton lines and the availability of APHIS' written decision.

Authority: 7 U.S.C. 150aa–150jj, 151–167, and 1622n; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(c).

Done in Washington, DC, this 3rd day of February 1995.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–3290 Filed 2–8–95; 8:45 am]

BILLING CODE 3410–34–M

[Docket 94–119–3]

Boll Weevil Control Program; Change of Public Hearing Site

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has changed the location and time of one of two public hearings scheduled to be held regarding an environmental assessment and preliminary finding of no significant impact for a proposed program to eradicate the boll weevil in the Lower Rio Grande Valley, Texas. The hearings were announced in a notice published in the **Federal Register** on January 30, 1995. We have changed the site and time of the second hearing in response to requests from the public.

DATES: Two public hearings will be held on February 16, 1995, in Weslaco, TX; one from 1 p.m. to 5:30 p.m., the other from 7:30 p.m. to 10:30 p.m. Pre-hearing registration for oral participation at a hearing may be made by mail (postmarked on or before February 8, 1995), or at the hearing site on the date of the hearings, beginning one hour prior to each hearing.

ADDRESSES: The first public hearing (1 p.m. to 5:30 p.m.) will be held in the Hoblitzelle Auditorium, Texas Agriculture Experiment Station, 2415 East Highway 83, Weslaco, TX. The second public hearing (7:30 p.m. to 10:30 p.m.) will be held at the Best Western Palm Air Motor Inn, 415 South International Boulevard (Highway 1015), Weslaco, TX. Registration for oral participation at either hearing may be mailed to Vicki Wickheiser, Environmental Analysis and Documentation, BBEP, APHIS, USDA, Room 543, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

FOR FURTHER INFORMATION CONTACT: Vicki Wickheiser at the address listed above or by telephone at (301) 436–8963.

SUPPLEMENTARY INFORMATION: On January 30, 1995, the Animal and Plant Health Inspection Service published in the **Federal Register** (60 FR 5617–5618, Docket No. 94–119–2) a notice that, in part, announced that two public

hearings have been scheduled for February 16, 1995, in Weslaco, TX. The hearings are being held to explain the findings in an environmental assessment (EA) prepared for a proposed program to eradicate the boll weevil in the Lower Rio Grande Valley of Texas. The hearings are also intended to provide a forum for the public to present views and ask questions regarding the EA.

In response to requests received from the public, we have changed the site and time of the second hearing. The on-site pre-hearing registration and the hearing itself will be held at the Best Western Palm Air Motor Inn (see the **ADDRESSES** section of this notice). The time and place of the first hearing remain the same as announced in the January 30 notice (see the **DATES** section of this notice).

Persons who wish to speak at either hearing may register in advance by mail (see the **ADDRESSES** section of this notice), or in person at the hearing site. To register by mail, individuals should send a letter or postcard with their name and affiliation (e.g., farm worker, grower, or academician) and should specify which of the hearings they wish to attend, and the approximate length of time needed for their presentation and questions. On the day of the hearing, registration at the hearing site will begin at noon for the 1 p.m. hearing and at 6:30 p.m. for the 7:30 p.m. hearing. Attendees who do not register in advance will be allowed to speak after all scheduled speakers have been heard. We ask that anyone who reads a statement provide two copies to the presiding officer at the hearing. The presiding officer may limit the time for each presentation in order to allow everyone wishing to speak the opportunity to be heard.

The substance of this notice will be published in newspapers (English and Spanish) serving the Lower Rio Grande Valley of Texas.

Done in Washington, DC, this 3rd day of February 1995.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–3289 Filed 2–8–95; 8:45 am]

BILLING CODE 3410–34–P

Forest Service

Mount St. Helens National Volcanic Monument Boundary Modification

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to modify boundary.

SUMMARY: The Forest Service hereby gives notice of a proposed minor boundary modification for the Mount St. Helens National Volcanic Monument, Gifford Pinchot National Forest, Cowlitz County, Washington. The Act of August 26, 1982, establishing the Monument requires public notice of proposed boundary changes for a 60-day period prior to final approval by the Secretary of Agriculture.

DATES: The 60-day notice period expires April 10, 1995.

FOR FURTHER INFORMATION CONTACT: Ralph Bauman, Lands Staff, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090, telephone: (202) 205–1248; or Bruce Watson, Assistant Lands Staff Officer, Gifford Pinchot National Forest, P.O. Box 8944, Vancouver, Washington 98668–8944, telephone: (206) 750–5103.

SUPPLEMENTARY INFORMATION: In accordance with section 1(b)(2) of the Act of August 26, 1982 (96 Stat. 301), establishing the Mount St. Helens National Volcanic Monument, the Secretary of Agriculture proposes a minor modification of the originally adopted boundary of the Monument. The modification will remove approximately 1.93 acres from the 111,500-acre Monument.

The current boundary of the Monument follows the east-west centerline of Section 35 to the south right-of-way line of State Route 504. The revision would delete a strip of land 100 feet wide containing Weyerhaeuser Company's access road to their lands north of the Monument.

The purpose of this boundary change is to recognize the newly created land ownership pattern in the area. During the negotiations with Weyerhaeuser Company for the acquisition of their property, it was agreed to exclude this 1.93 acre parcel. The acquisition of the Weyerhaeuser Company lands was completed in April of 1993, and a minor modification of the boundary is appropriate in this area.

The legal description of the boundary change is as follows: All descriptions are for the Willamette Meridian, Cowlitz County, Washington.

A strip of land 100 feet wide, 50 feet on each side of the following described centerline, as surveyed and filed in VOL. 12 PAGE 78, Cowlitz County, Washington. Beginning at the West ¼ corner of section 35, T. 10 N., R. 4 E., thence S 88°−41′−06″ E, along the East-West centerline of section 35, a distance of 2483.41 feet to the intersection of the centerline of Weyerhaeuser road number 3500, and the true point of beginning; thence southerly with the centerline of Weyerhaeuser road number 3500, S 18°−19′−24″ E a distance of 290.23 feet to the beginning of a curve concave to the West, having a radius of 247.03 feet, thence southerly 98.67 feet along said curve with a central angle of 22°−53′−04″ to the end of said curve, thence S 4°−33′−40″ W a distance of 114.01 feet to the beginning of a curve concave to the West, having a radius of 245.21 feet, thence southwesterly 206.80 feet along said curve with a central angle of 48°−19′−21″ to the end of said curve, thence S 52°−53′−01″ E a distance of 130.34 feet to the intersection with the Northerly right of way for State Highway number 504.

Maps showing this modification are available at the Office of the Forest Supervisor, Gifford Pinchot National Forest, 6926 E. Fourth Plain Blvd, Vancouver, Washington, and at the Office of the Monument Manager, Chelatchie, Washington. Notice has also been given to congressional committees as required by the Act. A notice of final action on this boundary revision will be published in the **Federal Register** following the 60-day period.

Dated: February 2, 1995.

Sterling J. Wilcox,

Acting Associate Deputy Chief.

[FR Doc. 95–3161 Filed 2–8–95; 8:45 am]

BILLING CODE 3410–11–M

Thompson Creek Supplemental Plan of Operation Challis National Forest, Custer County, Idaho

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare supplemental environmental impact statement.

SUMMARY: The USDA, Forest Service, will prepare a supplement to the October 1980, Environmental Impact Statement (EIS) for the Cyprus Thompson Creek Mine (CTC). The Supplement will disclose the environmental effects of a proposal submitted by Thompson Creek Mining Company (TCMC) to prevent, control and treat acid rock drainage (ARD) at the Thompson Creek Mine. The potential for acid rock drainage was evaluated in the 1980 EIS, however, the predictive modeling program did not project that acid generation would be sufficient to cause ARD. The occurrence of ARD is a new circumstance, relevant to environmental concerns and bearing on the impacts of the project, therefore, the 1980 EIS will be supplemented to disclose the effects of these new circumstances. The proposal, as submitted by CTC, identifies modifications to the operating plan which would eliminate or control acid rock drainage. The modifications to the plan would: (1) Identify and isolate waste rock that has the potential for ARD, (2) limit infiltration and migration

of acid drainage within the identified waste rock and (3) modify the tailings disposal process by adding a pyrite reduction system to separate the residual pyrite from the tailings. The pyrite concentrate would be disposed of in a subaqueous environment where oxidation and acid generation would be prevented. The proposal also discusses measures to be taken should mining operations terminate prior to the construction of the pyrite reduction system outlined above. In that circumstance, TCMC proposes to place a cap of inert material on the tailings embankment and impoundment to alleviate acid generation.

There are approximately 525 acres of patented land in the project area, including the open pit. The remainder, approximately 2,500 acres, is land administered by the Challis National Forest or the Salmon District of the Bureau of Land Management. The mine is located in Custer County, five miles north of the Salmon River and 30 miles southwest of Challis, Idaho.

The proposal to develop and implement measures to prevent, control and treat ARD represents both connected or cumulative actions as defined by the Council on Environmental Quality (40 CFR 1508.25). The purpose of the proposal is to continue the development of a mineral resource while minimizing or preventing adverse effects resulting from ARD that were not predicted in the 1980 Thompson Creek EIS or approved Plan of Operations. Forest Service policy is to facilitate the orderly exploration, development and production of mineral resources within the National Forest System on lands open to these activities. At the same time, the Forest Service is charged to ensure that these activities are conducted in an environmentally sound manner, and that once completed, reclamation of the land to a stable and usable condition is accomplished.

This supplement to the 1980 EIS will tier to the Challis National Forest Land and Resource Management Plan (Forest Plan) and Final EIS (June 1987) which provide overall guidance of all land management activities on the Challis National Forest, including mineral exploration and development. This document also tiers to the 1980 Environmental Impact Statement for the Thompson Creek Molybdenum Project.

DATES: Written comments and suggestions must be submitted on or before March 13, 1995.

ADDRESSES AND FURTHER INFORMATION: Submit written comments and suggestions on the proposed activities to Liz McFarland, Project Coordinator, Salmon and Challis National Forests, Headquarters Building, P.O. Box 729, Salmon, Idaho, 83467, Phone (208) 756–5139. To be placed on the project mailing list or for additional information, contact the Project Coordinator identified above.

SUPPLEMENTARY INFORMATION: The Thompson Creek Mining Company submitted a Supplemental Plan of Operation for the Thompson Creek Molybdenum Mine to the Challis National Forest and the Salmon District of the Bureau of Land Management in February 1993. The Supplemental Plan was revised in February 1994. The Supplemental Plan was based on a sampling program initiated in 1990 to characterize ARD. The plan, as proposed by TCMC is summarized as follows:

1. Minimize the amount of water and air coming into contact with sulfide minerals by encapsulating waste rock (determined to have the potential to generate ARD) with compacted volcanic material within the existing waste dumps. Final reclamation of the waste dumps would consist of shaping and covering surfaces with materials designed to prevent upward diffusion of acidity, limit the infiltration of water, protect cover materials from freeze-thaw damage and support growth of a vegetative cover.

2. The existing milling process would be modified to remove a portion of the pyrite sufficient to produce an inert tailings. The pyrite removed would be disposed of in areas of the impoundment which will be saturated with water in order to limit exposure to oxygen. The inert tailings produced would be placed on the embankment, paddock and beach portion of the tailings facility. As proposed, this would result in approximately 140 feet of inert tailings, by close of mine. At final reclamation, the interior of the impoundment area would be regraded using inert material so that surface drainage is directed toward the west side of the embankment. This would produce a free water pond near the west side of the embankment and a minimum 10 foot layer of inert material over the interior of the impoundment. The remainder of the impoundment would be covered by 140 feet of inert tails or a low permeability soil cap or a layer of inert fill 15 to 30 feet thick.

3. Hydrologic investigations indicate that the pit would fill at least partially with water when mining ends. Hydrogeologic studies and geochemical analyses would be conducted prior to mine closure and appropriate measures to preserve in-pit water quality would be developed.

The Challis Forest Plan provides guidance for management activities within the potentially affected area through its goals, objectives, standards and guidelines, and management area direction. The proposal would occur within Management Areas 8 and 9. Management in these areas emphasize enhancement of fish and wildlife habitat, range administration, maintenance of water quality, timber production and dispersed recreation. It recognizes the potential for high-value, locatable mineral occurrence and probable development. It directs that exploration, location, leasing and development of energy and non-energy minerals resources be coordinated with other resources.

The decision to be made is what should be done in relation to the proposal submitted by TCMC: (a) Approve the project as proposed, (b) approve the project with mitigation measures to address the issues, (c) deny approval of the proposal. Under the United States mining Laws of May 10, 1872, as amended (30 U.S.C. 22), United States citizens and corporations have the right to search for and develop minerals upon public lands, including National Forest Systems lands, open to mineral entry. Forest Service regulations (36 CFR 228, Subpart A) require that the agency work with mineral operators to minimize or eliminate adverse environmental impacts from mineral activities on National Forest System lands.

The Supplement will analyze the direct, indirect, and cumulative environmental effects of the alternatives. Past, present, and projected activities on private Bureau of Land Management and National Forest lands will be considered. The Supplement will disclose the analysis of site-specific mitigation measures and their effectiveness.

Public participation is an important part of the analysis process (40 CFR 1501.7). Scoping activities, to date, have included the following: Letter and scoping document, dated 2/15/94, to interested individuals, groups and organizations; press release and legal narrative in the ''Challis Messenger'' and the Salmon ''Recorder-Herald,'' 2/17/94. The public is encouraged to visit with Forest Service officials at any time during the analysis and prior to the decision. In addition, the Forest Service is seeking information, comments, and assistance from federal, state, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. No

additional public meetings are scheduled at this time.

Comments from the public and other agencies will be used to prepare the Draft Supplemental EIS. The scoping process to date has identified the following preliminary issues:

1. What is the potential for development of acid mine drainage and mobilization of heavy metals from geologic materials exposed by mining activities?

2. How would existing mine facilities and activities be changed to prevent, control or treat ARD? What are the long term maintenance requirements of these facilities along with their predicted long-term viability and stability and how would bonding reflect these changes?

3. What is the potential for adverse impacts to water quality downstream of project facilities due to ARD and how would water quality be maintained and beneficial uses protected?

4. Would fish and their habitat be affected by ARD discharges into area streams? What are the potential impacts to fish species listed as threatened or endangered under the Endangered Species Act?

5. Would water monitoring be adequate to detect and allow for the correction of any water quality problems resulting from the proposed action?

This list may be verified, expanded, or modified based on additional scoping for this proposal.

In order to implement the project, the proponent, TCMC, must obtain approval or consultation of their proposed modification from other regulatory agencies including the Environmental Protection Agency (EPA), National Marine Fisheries Service (NMFS), U.S. Fish and Wildlife Service (USFWS), Idaho Department of Lands (IDL), Idaho Department of Health and Welfare (IDHW) and the Idaho Department of Water Resources (IDWR). Implementation may take place through the selection of an alternative from the Supplemental EIS.

The Challis National Forest is the lead agency in this environmental analysis and Supplemental EIS. The Salmon District office of the Bureau of Land Management is a cooperating agency.

The Draft Supplemental EIS is expected to be filed with the Environmental Protection Agency (EPA) and available for public review in late July 1995. At that time, the EPA will publish a Notice of Availability of the Draft Supplemental EIS in the **Federal Register**. The comment period on the Draft Supplemental EIS will be 45 days from the date the EPA's notice of availability appears in the **Federal Register**. It is very important that those interested in this proposal participate at that time. To be most helpful, comments on the Draft EIS should be as specific as possible. The Final Supplemental EIS is scheduled to be completed by December, 1995.

The Forest Service believes, at this stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage, but that are not raised until after completion of the final environmental impact statement, may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Ind.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments should be as specific as possible. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

I am the responsible official for this environmental impact statement. My address is Salmon and Challis National Forests, P.O. Box 729, Salmon, Idaho 83467.

Dated: February 3, 1995.

Charles C. Wildes,

Forest Supervisor, Challis National Forest.

[FR Doc. 95–3217 Filed 2–8–95; 8:45 am]

BILLING CODE 3410–11–M

Wildcat River Advisory Commission; Notice of Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Wildcat River Advisory Commission will meet at the Jackson Town Hall in Jackson, New Hampshire, on March 8, 1995. The purpose of the meeting is to review the draft river management plan for administration of the designated Wild and Scenic Wildcat River. The Wild and Scenic Rivers Act requires the establishment of an advisory commission to advise the Secretary of Agriculture on administration of the river. Interested members of the public may obtain copies of the draft plan from the Saco Ranger District office. The public is encouraged to attend the meeting and may provide written comment on the plan to the commissioners c/o the district office.

DATES: The meeting will be held March 8, 1995, at 7:30 p.m.

ADDRESSES: The meeting will be held at the Jackson Town Hall, Route 16B, Jackson, New Hampshire.

Send written comments to David Pratt III, Assistant District Ranger, Saco Ranger District, White Mountain National Forest, 33 Kancamagus Highway, Conway, NH 03818.

FOR FURTHER INFORMATION CONTACT: David Pratt III, Assistant District Ranger, Saco Ranger District, (603) 447–5448.

Dated: February 1, 1995.

Rick D. Cables,

Forest Supervisor.

[FR Doc. 95–3264 Filed 2–8–95; 8:45 am]

BILLING CODE 3410–11–M

Forms Under Review by Office of Management and Budget

February 3, 1995.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title the information collection; (3) Form numbers(s), if applicable; (4) Who will be required or asked to report; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from:

Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, D.C. 20250; (202) 690–2118.

Revision

• Food and Consumer Services
Model Food Stamps, Periodic Reporting, Notice of Late Incomplete Reporting, Adequate Notice, Sponsored Aliens, Duplication Participation, and Disqualified Recipient Report
FCS–385, 386, 387, 394, 441, 442
Individuals or households; State, local or tribal government; 111,008,185 responses; 36,964,654 hours
Patricia Maggi (703) 305–2468

• Agricultual Marketing Service
Reporting and Recordkeeping Requirements for 7 CFR Part 29
Forms TB–87 and TB–92
Business or other for-profit; 13,414 responses; 5,569 hours
Larry L. Crabtree (202) 205–0101

Extension

• Federal Crop Insurance Corporation
Field Inspection And Claim For Indemnity
FCI–74, FCI–74 T–P–C, FCI–63 Citrus, and FCI–63 Raisin
Individuals or households; Farms; 40,000 responses; 10,000 hours
Bonnie L. Hart (202) 254–8393

New Collection

• Animal & Plant Health Inspection Service
Exotic Newcastle Disease in Birds and Poultry; Chlamydiosis in Poultry
Individuals or households; Business or other for-profit; Farms; State, Local or Tribal Government; 45 responses; 21 hours
Dr. Christopher M. Groocock (301) 436–8240

• Food Safety and Inspection Service
Pathogen Reduction; Hazard Analysis and Critical Control Points (HACCP) Systems
Business or other for-profit; 10,662 responses; 14,371,901 hours
Lee Puricelli (202) 720–7163

Donald E. Hulcher,

Deputy Departmental Clearance Officer.

[FR Doc. 95–3284 Filed 2–8–95; 8:45 am]

BILLING CODE 3410–01–M

COMMISSION ON IMMIGRATION REFORM

Washington, D.C. Consultations

AGENCY: U.S. Commission on Immigration Reform.

ACTION: Announcement of commission consultations.

This notice announces consultations to be held by the U.S. Commission on Immigration Reform in Washington, DC on February 23 and February 24, 1995. The Commission, created by Section 141 of the Immigration Act of 1990, is mandated to review the implementation and impact of U.S. immigration policy and report its findings to Congress. An interim report, U.S. Immigration Policy: Restoring Credibility, was issued on September 30, 1994; the final report is due in 1997.

The consultation participants will include the Commissioners, researchers, government officials, representatives of business, labor, community, ethnic, and religious organizations, and other interested parties. Panels on the first day will examine labor market and employment-based immigration issues. The Commission seeks to gain greater understanding of the effects of legal immigration on the labor market, the objectives and priorities for permanent and temporary workers and procedures for testing the labor market. Panels on the second day will focus on family reunification, including admission priorities, categories, numbers, backlogs, and likely future trends. Policies to be examined include the criteria used for determining who qualifies for family reunification and its impact on U.S. society and economy.

Date: February 23, 1995.

Time: 9:00 am–12:00 pm (Legal Immigration and the Labor Market); 2:00 pm–5:00 pm (Temporary Workers, Labor Certification and other means of Testing the Labor market).

Date: February 24, 1995.

Time: 9:00 am–1:00 pm (Family Reunification).

Address: Room 2226, Rayburn House Office Building, Independence Avenue and South Capitol Street, SW., Washington, DC.

For Further Information: Paul Donnelly (202) 673–5348.

Dated: February 2, 1995.

Susan Martin,

Executive Director.

[FR Doc. 95–3166 Filed 2–8–95; 8:45 am]

BILLING CODE 6820–97–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–830]

Notice of Antidumping Order: Coumarin From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: February 9, 1995.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger or Louis Apple, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–4136 or (202) 482–1769, respectively.

Scope of Order

The product covered by this order is coumarin. Coumarin is an aroma chemical with the chemical formula $C_9H_6O_2$ that is also known by other names, including 2H–1-benzopyran-2-one, 1,2-benzopyrone, cis-o-coumaric acid lactone, coumarinic anhydride, 2–Oxo-1,2-benzopyran, 5,6-benzo-alpha-pyrone, ortho-hydroxyc innamic acid lactone, cis-ortho-coumaric acid anhydride, and tonka bean camphor.

All forms and variations of coumarin are included within the scope of the order, such as coumarin in crystal, flake, or powder form, and ''crude'' or unrefined coumarin (*i.e.* prior to purification or crystallization). Excluded from the scope of this order are ethylcoumarins ($C_{11}H_{10}O_2$) and methylcoumarins ($C_{10}H_8O_2$). Coumarin is classifiable under subheading 2932.21.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Antidumping Duty Order

In accordance with sections 735(a) of the Tariff Act of 1930, as amended (''the Act''), the Department of Commerce (''the Department'') made its final determination that coumarin from the People's Republic of China (''PRC'') is being sold at less than fair value (59 FR 66895, December 28, 1994). On February 1, 1995, the International Trade Commission (ITC) notified the Department of its final determination, pursuant to section 735(b)(1)(A)(i) of the Act, that an industry in the United States is materially injured by reason of imports of the subject merchandise from the PRC.

In addition, three ITC Commissioners found that critical circumstances exist with regard to such products, and three Commissioners found that critical circumstances do not exist with regard to such imports from the PRC. The Commissioners do not agree as to whether three votes constitute an affirmative critical circumstances determination. There is no definition of or limitation on the meaning of the term ''determination'' in the statute or

legislative history for purposes of the tie-vote rule. The statute refers to critical circumstances interchangeably as a determination or finding. Therefore, we conclude that Section 771(11) applies to critical circumstances determinations and that it is appropriate to treat the tie vote in this case as an affirmative critical circumstances determination.

All unliquidated entries of coumarin from the PRC, that are entered, or withdrawn from warehouse, for consumption on or after May 6, 1994, the date 90 days prior to the publication of the Department's preliminary determination, except for imports by Jiangsu Native Import and Export Corporation (Jiangsu Native), are liable for the assessment of antidumping duties. In the case of Jiangsu Native, the effective date of suspension of liquidation is August 4, 1994, the date of publication of the Department's preliminary determination, (59 FR 39727).

In accordance with section 736(a)(1) of the Act, the Department will direct Customs officers to assess, upon further advice by the administering authority, antidumping duties equal to the amount by which the foreign market exceeds the United States price for all relevant entries of coumarin from the PRC. Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins as noted below. The ''All Others'' rate applies to all exporters of PRC coumarin not specifically listed below.

The *ad valorem* weighted-average dumping margins are as follows:

Manufacturer/producer/exporter	Weighted-average margin percentage	Critical circumstances
Jiangsu Native Produce I/E Corp.	15.04	Negative.
Tianjin Native Produce I/E Corp.	50.35	Affirmative.
All others	160.80	Affirmative.

This notice constitutes the antidumping duty order with respect to coumarin from the PRC. Interested parties may contact the Central Records Unit, Room B–099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act and 19 CFR 353.21.

Dated: February 6, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–3329 Filed 2–8–95; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

[I.D. 020295A]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of receipt of two applications for scientific research permits (P45Q and P770#69) and receipt of an application for modification 1 to scientific research permit 914 (P770#67).

Notice is hereby given that the National Biological Survey in Corvallis, OR (NBS) and the Northwest Fisheries Science Center, NMFS in Seattle, WA (NWFSC) have applied in due form for scientific research permits (P45Q and P770#69) and that the Northwest Fisheries Science Center, NMFS in Seattle, WA (NWFSC) has applied in due form for Modification 1 to scientific research Permit 914 (P770#67) to take listed species as authorized by the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531-1543) and the NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217-227).

NBS requests authorization for a lethal take of juvenile, endangered, naturally produced Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*) as part of a study designed to compare the physiological responses of wild chinook smolts with hatchery-produced chinook smolts when subjected to the bypass and collection facility at Lower Granite Dam on the Lower Snake River in Washington. A comparison of the physiological responses of wild and hatchery-produced chinook smolts may indicate what aspects of bypass and collection for downriver transportation past hydropower projects are most stressful to wild listed fish. The requested duration of the permit is April 15 to June 30, 1995.

NWFSC requests a permit to conduct research with a take of the following endangered species: Juvenile Snake River sockeye salmon (*Oncorhynchus nerka*), juvenile, naturally produced and artificially propagated, Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*), and juvenile Snake River fall chinook salmon (*Oncorhynchus tshawytscha*). NWFSC will capture, handle, and tag subyearling, endangered, fall chinook salmon at McNary Dam on the Columbia River as part of a study comparing the adult recoveries of run-of-river subyearling chinook salmon subjected to transport past hydropower dams versus those migrating inriver under as favorable passage conditions as possible. The other two listed species will be captured and handled incidental to the research. NWFSC will capture, handle, and tag the subyearling fish from June 15 to September 15 during each of 3 separate years, not necessarily in succession. The requested duration of the permit is 5 years.

Permit 914 authorizes NWFSC to capture, handle, and release juvenile, endangered, naturally produced and artificially propagated Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*) and juvenile, endangered, Snake River fall chinook salmon (*Oncorhynchus tshawytscha*) as part of a study to assess the incidence of gas bubble disease (GBD) in selected aquatic biota of the Columbia River Basin during episodes of high spill volumes at Ice Harbor Dam on the Snake River and Bonneville Dam on the Columbia River in the Pacific Northwest. For Modification 1, NWFSC requests an increase in the take of the two listed species already authorized to be taken and authorization to capture, handle, and release juvenile, endangered, Snake River sockeye salmon (*Oncorhynchus nerka*) to carry out a new study objective. The purpose of the new objective is to compare the prevalence of signs of GBD in juvenile salmonids collected from the reservoir and tailrace of Ice Harbor Dam on the Snake River and the reservoir of McNary Dam on the Columbia River with the prevalence of signs of GBD in fish examined by Fish Passage Center Smolt Monitoring Program personnel at the same two dams. The requested duration for the new study objective is from April 15 to June 15, 1995. Permit 914 expires on December 31, 1998.

Written data or views, or requests for a public hearing on this application should be submitted to the Chief, Endangered Species Division, Office of Protected Resources, F/PR8, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226, within 30 days of the publication of this notice. Those individuals requesting a hearing should set out the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries,

NOAA. All statements and opinions contained in this application summary are those of the applicant and do not necessarily reflect the views of NMFS.

Documents submitted in connection with the above application are available for review by interested persons in the following offices by appointment:

Office of Protected Resources, NMFS, NOAA, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301–713–1401); and

Environmental and Technical Services Division, NMFS, NOAA, 525 North East Oregon St., Suite 500, Portland, OR 97232 (503-230-5400).

Dated: February 3, 1995.

Patricia A. Montanio,

Acting Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 95–3214 Filed 2–8–95; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 012695A]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of Permit 942 to Jane Provancha (P576).

On December 16, 1994, notice was published (59 FR 65016) that an application had been filed by Jane Provancha of the Biomedical Operations and Research Office of Kennedy Space Center (P576) to take listed green and loggerhead sea turtles (*Chelonia mydas* and *Caretta caretta*), to determine population and distribution trends in Mosquito Lagoon, FL, as authorized by the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531-1543) and the NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217-222).

Notice is hereby given that on February 3, 1995, as authorized by the provisions of the ESA, NMFS issued Permit No. 942 for the above taking, subject to certain conditions set forth therein.

Issuance of this permit, as required by the ESA, was based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the listed species which are the subject of this permit; (3) is consistent with the purposes and policies set forth in section 2 of the ESA. This permit was also issued in accordance with and is subject to parts 217-222 of Title 50 CFR, the NMFS regulations governing listed species permits.

The application, permit, and supporting documentation are available for review by interested persons in the following offices, by appointment:

Office of Protected Resources, NMFS, 1335 East-West Highway, Silver Spring, MD 20910–3226 (301–713–1401); and

Southeast Region, NMFS, NOAA, 9721 Executive Center Drive, St. Petersburg, FL 33702–2432 (813-893-3141).

Dated: February 3, 1995.

Patricia A. Montanio,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 95–3216 Filed 2–8–95; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[I.D. 121294B]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce; and Fish and Wildlife Service (FSW), Interior.

ACTION: Issuance of scientific research permit no. 938 (P368D).

SUMMARY: Notice is hereby given that Moss Landing Marine Laboratories, P.O. Box 450, Moss Landing, CA 95039–0450, (Principal Investigators: Drs. James T. Harvey, Daniel P. Costa, John Calambokidis, and Ms. Dawn Goley) has been issued a permit to take marine mammals for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment, in the following offices:

Chief, Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289); and

Director, Southwest Region, NMFS, 501 W. Ocean Boulevard, Long Beach, CA 90802–4213 (310/980–4047).

SUPPLEMENTARY INFORMATION: On October 11, 1994, notice was published in the **Federal Register** (59 FR 51418) that a request for a scientific research permit to take several species of marine mammals had been submitted by the above-named organization and individuals. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA) (16 U.S.C. 1531 *et seq.*), the Regulations Governing the Taking, Importing, and Exporting of Endangered Fish and Wildlife (50 CFR part 222), the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*), and fur seal regulations at 50 CFR part 215.

Issuance of this permit, as required by the ESA, was based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of this permit; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: February 2, 1995.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

Dated: February 2, 1995.

Margaret Tieger,

Acting Chief, Branch of Permits, Office of Management Authority, U.S. Fish and Wildlife Service.

[FR Doc. 95–3215 Filed 2–8–95; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment of Coverage for Import Limits and Visa and Certification Requirements for Certain Part-Categories Produced or Manufactured in Various Countries

February 6, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending coverage for import limits and visa and certification requirements.

EFFECTIVE DATE: February 7, 1995.

FOR FURTHER INFORMATION CONTACT: Lori E. Goldberg, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

To facilitate implementation of the bilateral textile agreements and export visa arrangements based upon the

Harmonized Tariff Schedule (HTS), for goods imported into the United States on or after January 1, 1995, the coverage of certain part-categories is being amended in all monitoring data, import limits and visa and certification arrangements for countries with these part-categories.

The attached directive contains HTS numbers which were published in the 1995 Harmonized Tariff Schedule.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994).

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

February 6, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, all monitoring and import control directives issued to you by the Chairman, Committee for the Implementation of Textile Agreements which include cotton, wool, man-made fiber, silk blend and other vegetable fiber textile products produced or manufactured in various countries and imported into the United States on or after January 1, 1995.

Also, this directive amends, but does not cancel, all directives establishing visa requirements for all countries for which visa arrangements are in place with the United States Government.

Effective on February 7, 1995, you are directed to make the changes shown below for all countries with the following part-categories. These changes also shall be made for all countries with these part-categories included in their visa and certification arrangement. These changes are effective for goods imported into the United States on or after January 1, 1995.

Category	Obsolete number	New number
338–B	6105.90.3010	6105.90.8010
	6110.90.0068	6110.90.9068
338–S	6105.90.3010	6105.90.8010
	6110.90.0068	6110.90.9068
339–B	6106.90.2010	6106.90.2510
	6110.90.0070	6110.90.9070
	6117.90.0022	6117.90.9020
339–S	6106.90.2010	6106.90.2510
	6110.90.0070	6110.90.9070
	6117.90.0022	6117.90.9020
340–O	6205.90.2010	6205.90.3010
341–O(other than 341–Y)	6217.90.0003	6217.90.9003
347–T	6103.19.4020	6103.19.9020
	6103.49.3010	6103.49.8010
	6113.00.0038	6113.00.9038
	6203.19.4020	6203.19.9020
	6203.49.3020	6203.49.8020
	6210.40.2033	6210.40.9033
	6211.20.3010	6211.20.3810
347–W	6203.19.4020	6203.19.9020
	6203.49.3020	6203.49.8020
	6210.40.2033	6210.40.9033
	6211.20.3010	6211.20.3810
348–T	6104.19.2030	6104.19.8030
	6104.69.3022	6104.69.8022
	6113.00.0042	6113.00.9042
	6117.90.0042	6117.90.9060
	6204.19.3030	6204.19.8030
	6204.69.3010	6204.69.6010
	6210.50.2033	6210.50.9060
	6211.20.6010	6211.20.6810
	6217.90.0050	6217.90.9050
348–W	6204.19.3030	6204.19.8030
	6204.69.3010	6204.69.6010
	6210.50.2033	6210.50.9060
	6211.20.6010	6211.20.6810
	6217.90.0050	6217.90.9050
359–C and 359(1)	6103.49.3034	6103.49.8034
	6104.69.3010	6104.69.8010
359–S	6211.11.2010	6211.11.8010
	6211.11.2020	6211.11.8020
	6211.12.3003	6211.12.8010
	6211.12.3005	6211.12.8020
359–V	6103.19.4030	6103.19.9030
	6104.19.2040	6104.19.8040
	6110.90.0044	6110.90.9044
	6110.90.0046	6110.90.9046
	6203.19.4030	6203.19.9030
	6204.19.3040	6204.19.8040
360–P	6302.21.1010	6302.21.3010
	6302.21.1020	6302.21.5010
	6302.21.2010	6302.21.7010
	6302.21.2020	6302.21.9010
	6302.31.1010	6302.31.3010
	6302.31.1020	6302.31.5010
	6302.31.2010	6302.31.7010
	6302.31.2020	6302.31.9010
360–O(other than 360–P)	6302.21.1050	6302.21.3030 and 6302.21.5030
	6302.21.2050	6302.21.7030 and 6302.21.9030
	6302.31.1050	6302.31.3030 and 6302.31.5030
	6302.31.2050	6302.31.7030 and 6302.31.9030
438–W	6106.90.2020	6106.90.2520
	6109.90.2035	6109.90.8020
	6110.90.0074	6110.90.9074
438–O(other than 438–W)	6105.90.3020	6105.90.8020
	6110.90.0072	6110.90.9072
	6117.90.0023	6117.90.9025
440–M	6205.90.2020	6205.90.3020
443–K	6103.19.4040	6103.19.9040
465(for India visa)	5701.10.2010	5701.10.4000
	5701.10.2090	5701.10.9000
634–W	6201.19.0030	6201.19.9030
	6201.99.0031	6201.99.9030
	6210.20.1020	6210.20.5000
	6210.40.1020	6210.40.5020
	6211.20.2030	6211.20.2820
634–K	6101.90.0030	6101.90.9030
	6113.00.0025	6113.00.9025
638–B	6105.90.3030	6105.90.8030
	6110.90.0076	6110.90.9076
639–B	6106.90.2030	6106.90.2530
	6110.90.0078	6110.90.9078
	6117.90.0026	6117.90.9030
640–O(other than 640–Y)	6205.90.2030	6205.90.3030
640–D	6205.90.2030	6205.90.3030
641–O(other than 641–Y)	6217.90.0010	6217.90.9010
643–K	6103.19.4050	6103.19.9050
643–W	6203.19.4050	6203.19.9050
644–K	6104.19.2060	6104.19.8060
644–W	6204.19.3060	6204.19.8060
647–K	6103.49.3014	6103.49.8014
	6113.00.0044	6113.00.9044
647–O(not knit)	6203.49.3030	6203.49.8030
	6210.40.1035	6210.40.5030
	6211.20.3030	6211.20.3820
647–T	6103.49.3014	6103.49.8014
	6113.00.0044	6113.00.9044
	6203.49.3030	6203.49.8030
	6210.40.1035	6210.40.5030
	6211.20.3030	6211.20.3820
647–W	6203.49.3030	6203.49.8030
	6210.40.1035	6210.40.5030
	6211.20.3030	6211.20.3820
648–K	6104.69.3026	6104.69.8026
	6113.00.0052	6113.00.9052
	6117.90.0046	6117.90.9070
648–O(not knit)	6204.69.3030	6204.69.6030
	6210.50.1035	6210.50.5035
	6211.20.6030	6211.20.6820
	6217.90.0060	6217.90.9060
648–T	6104.69.3026	6104.69.8026
	6113.00.0052	6113.00.9052
	6117.90.0046	6117.90.9070
	6204.69.3030	6204.69.6030
	6210.50.1035	6210.50.5035
	6211.20.6030	6211.20.6820
	6217.90.0060	6217.90.9060
648–W	6204.69.3030	6204.69.6030
	6210.50.1035	6210.50.5035
	6211.20.6030	6211.20.6820
	6217.90.0060	6217.90.9060
659–C and 659(1)	6103.49.3038	6103.49.8038
	6104.69.3014	6104.69.8014
	6210.10.4015	6210.10.9010
659–V	6110.90.0052	6110.90.9052
	6110.90.0054	6110.90.9054
845(1)	6110.90.0024	6110.90.9024
	6110.90.0042	6110.90.9042
	6117.90.0021	6117.90.9015
845(2)	6110.90.0022	6110.90.9022
	6110.90.0040	6110.90.9040
846(1)	6110.90.0020	6110.90.9020
	6110.90.0038	6110.90.9038
	6117.90.0018	
846(2)	6110.90.0018	6110.90.9018
	6110.90.0036	6110.90.9036
847–T	6103.49.3017 and 6103.49.3024	6103.49.8024

Category	Obsolete number	New number
.....	6104.69.3034 and 6104.69.3038	6104.69.8038
.....	6117.90.0051	6117.90.9075
.....	6203.49.3040 and 6203.49.3045	6203.49.8045
.....	6204.69.3052	6204.69.6040
.....	6211.20.3040	6211.20.3830
.....	6211.20.6040	6211.20.6830
.....	6211.39.0040	6211.39.9030
.....	6211.49.0040	6211.49.9030
.....	6217.90.0070	6217.90.9070

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–3304 Filed 2–8–95; 8:45 am]

BILLING CODE 3510–DR–F

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

AmeriCorps*USA State and National Direct, Availability of Funds

AGENCY: Corporation for National and Community Service

ACTION: Notice of availability of funds.

SUMMARY: The Corporation for National Service announces the availability of approximately $160 million to support new and renewal grants to States, the District of Columbia, and Puerto Rico, through Corporation approved State Commissions, Alternative Administrative Entities (AAEs), or Transitional Entities (TEs). Approximately $80 million will support new and renewal grants through a population-based formula. Additionally, up to $80 million in program funds are available to States to support new and renewal grants on a competitive basis.

The Corporation also announces the availability of approximately $19 million to support new competitive program grants to national nonprofits, professional corps, Federal agencies, and programs operating in more than one state through the national direct competition. Approximately $55 million is also available through the national direct competition to support renewal and expansion grants.

The Corporation published in the **Federal Register** on October 27, 1994, and January 10, 1995, notices describing proposed changes to Corporation grant-making guidelines, policies and priorities for 1995 and inviting comments with regard to three of its main programs: AmeriCorps*USA, Learn & Serve America K–12, and Learn & Serve America Higher Education. The proposed changes applied to the FY 1995 grant cycle and were non-regulatory in nature. In response to those notices, the Corporation received comments from over 50 organizations and agencies, including states, primary and secondary schools, institutions of higher education, community-based organizations, federal agencies and non-profit organizations. The second section of this notice will address these comments.

DATES: All AmeriCorps*USA State applications must be received by 3:30 p.m., Daylight Savings Time, May 1, 1995, to be eligible. Applicants for new AmeriCorps*USA National Direct grants must be received by 3:30 p.m., Daylight Savings Time, May 9, 1995, to be eligible. Applications for renewal and expansion of existing AmeriCorps*USA National Direct grants must be received by 3:30 p.m., Daylight Savings Time, April 18, 1995, to be eligible.

ADDRESSES: Applications for AmeriCorps*USA State should be submitted to The Corporation for National Service, AmeriCorps State, 9th Floor, Box AS, 1201 New York Ave. N.W., Washington, D.C., 20525. Facsimiles will not be accepted. Applications for AmeriCorps*USA National Direct should be submitted to The Corporation for National Service, AmeriCorps Direct, 9th Floor, Box AD, 1201 New York Ave. N.W., Washington, D.C., 20525. Facsimiles will not be accepted.

FOR FURTHER INFORMATION CONTACT: Persons who have questions about the AmeriCorps*USA State application process may call or write the State Commission office in their state or the Corporation for National Service, AmeriCorps State, 1201 New York Ave. N.W., Washington, D.C., 20525. Phone: (202) 606–5000, ext. 474; TTD: (202) 565–2799. Persons who wish to receive an AmeriCorps*USA State application should contact the State Commission office in their state.

Persons who have questions about the AmeriCorps*USA National Direct application process, or who wish to receive a National Direct application, may call or write the Corporation for National Service, AmeriCorps Direct, 1201 New York Ave. N.W., Washington, D.C., 20525. Phone: (202) 606–5000, ext. 474; TTD: (202) 565–2799.

SUPPLEMENTARY INFORMATION:

I. Availability of Funds

*1. AmeriCorps*USA State*

Approximately $80 million in program funds are available for new and renewal grants to States through the population-based formula allotment and approximately $80 million in program funds are available to States on a competitive basis for renewals and new grants. The following chart details the amount of funding that each State is eligible to apply for under the population-based formula allotment. The chart also details the number of programs that a State may submit under the competitive funding:

State	Formula allotment	Small state priority	New competitive submission [1]	Total competitive submissions [2]
Alabama	$1,263,352	.....	6	7
Alaska	181,554	$118,446	4	5
Arkansas	734,472	.....	6	6
Arizona	1,220,307	.....	5	7
California	9,412,178	.....	10	17
Colorado	1,094,713	.....	5	6
Connecticut	980,801	.....	5	6
Delaware	211,523	88,477	5	5
D.C.	170,744	129,256	4	5
Florida	4,178,254	.....	8	10
Georgia	2,112,778	.....	6	8
Hawaii	352,931	.....	4	5
Idaho	339,296	.....	5	5
Illinois	3,519,164	.....	6	9

State	Formula allotment	Small state priority	New competitive submission [1]	Total competitive submissions [2]
Indiana	1,722,505	.....	7	7
Iowa	847,243	.....	6	6
Kansas	764,830	.....	2	6
Kentucky	1,145,965	.....	4	6
Louisiana	1,292,187	.....	6	7
Maine	371,391	.....	5	5
Maryland	1,499,167	.....	4	7
Massachusetts	1,809,063	.....	5	7
Michigan	2,843,698	.....	8	9
Minnesota	1,367,705	.....	4	7
Mississippi	799,287	.....	6	6
Missouri	1,580,432	.....	5	7
Montana	256,350	43,650	4	5
Nebraska	485,978	.....	6	6
Nevada	436,319	.....	6	6
New Hampshire	340,430	.....	4	5
New Jersey	2,366,895	.....	6	8
New Mexico	495,160	.....	5	6
New York	5,440,870	.....	9	12
North Carolina	2,117,120	.....	6	8
North Dakota	191,051	108,949	5	5
Ohio	3,324,643	.....	7	9
Oklahoma	975,655	.....	6	6
Oregon	924,184	.....	5	6
Pennsylvania	3,609,179	.....	7	10
Puerto Rico	1,072,107	.....	6	6
Rhode Island	298,487	1,513	3	5
South Carolina	1,097,210	.....	5	6
South Dakota	215,958	84,042	5	5
Tennessee	1,549,768	.....	5	7
Texas	5,503,497	.....	7	12
Utah	571,347	.....	6	6
Vermont	173,748	126,252	4	5
Virginia	1,961,907	.....	7	7
Washington	1,600,032	.....	6	7
West Virginia	545,619	.....	6	3
Wisconsin	1,521,744	.....	7	7
Wyoming	142,536	157,464	4	5

[1] This column reflects the maximum number of new programs a State may submit in their competitive application and does not include requests for renewals. However, States may substitute a new program if they decide not to submit a currently funded program for renewal.
[2] This column reflects the total number of programs, both new and renewal, that a State may submit under the competitive funding.

The Corporation has limited the number of programs a State may include in its application for competitive funding to five, plus an additional program for each full percentage point of the total State population (rounded to the nearest full percentage point) that State contains.

Approximately $4 million has been set aside from the formula funds for child care. This amount will be allocated to States on a formula basis, and paid directly as needed to the National Association for Child Care Resource and Referral Agencies (NACCRRA), the Corporations national grantee to cover child care costs, up to the States designated formula amount. Amounts from this fund which are not needed by the State for child care will be given to the State for other approved program costs.

For 1995, the Corporation is committed to renewing 1994 grants, if those programs meet quality standards. Renewal applications may request year-two funding to expand programs or to continue the same program as in year one. If an expansion request exceeds 25% of the year-one budget, the portion that exceeds 25% must be submitted as a new application following new application instructions. Given this commitment to renewals, the Corporation expects that the majority of the program funds available will be used for renewal grants. Program funds not committed for renewals will be made available to States for new grants in both the formula and competitive funding streams.

The Corporation is committed to supporting only high quality AmeriCorps programs, and formula allotments are not an entitlement for States. Program quality will be the most important criteria for considering both renewal requests and support for new programs. The Corporation's requirements for AmeriCorps are set forth in the Corporation's regulations and in the applications. In addition to being thoroughly familiar with the regulations, prospective applicants should read the application carefully because, in some cases, more specific information is provided there. The requirements apply to all programs that submit applications to States for funding. The regulations for AmeriCorps programs were published in the **Federal Register** on March 23, 1994 (45 CFR Parts 2510, 2513, et al.) and are available at your public library. You may also refer to the Principles for High Quality National Service Programs which includes program examples. For copies, contact the Corporation at (202) 606–5000, x474.

*2. AmeriCorps*USA National Direct*

Approximately $19 million is available for new competitive program grants and approximately $55 million is available to support renewal and

expansion grants, through the national direct competition. National nonprofits, Federal agencies, professional corps programs, and multi-state programs are eligible to apply directly to the Corporation for these funds. This allows the Corporation to fund multi-state and multi-site programs that are national in scope and build on existing networks of youth and service programs. Eligible applicants may apply for operating funds to establish AmeriCorps*USA programs, or for education awards only.

II. AmeriCorps*USA State and National Direct Grant Applications Guidelines

1. 1995 Issue Area Priorities

The Corporation received a number of comments suggesting changes to the 1995 priorities. Specifically, several comments expressed concern that an ''urban bias'' existed in the environment priority. Because that was not the Corporation's intent, we have revised the priority to read as follows: ''Community/Neighborhood Environment—Initiate innovative programs in low-income areas that promote sustainable communities by reducing environmental risks and conserving natural resources.'' By changing the phrase ''low-income neighborhoods'' to ''low-income areas'' and by adding the word ''community,'' the priority has been broadened to encompass rural environments and communities.

Other comments suggested that the Corporation include homelessness, health care, and/or adult literacy as a priority. The Corporation declined to add these as priorities because these issues were adequately addressed by 1994 programs, with many of these programs expected to be funded in 1995 as renewal programs. In addition, homelessness is an AmeriCorps*VISTA priority for 1995, approximately 15% of AmeriCorps*VISTA are doing health care projects, and approximately 25% of AmeriCorps*VISTA are doing adult literacy projects. A number of comments opposed the establishment of new priorities for the 1995 grant cycle and requested that the Corporation retain the 1994 priorities or allow programs to apply under either the 1994 or the 1995 priorities. The Corporation considered these comments but declined to make changes. The 1995 priorities were chosen because they address issues and needs that the Corporation believes were underrepresented in the 1994 grant competition. Programs funded in 1994 may continue to address areas covered by the 1994 priorities and need not change their focus to meet new priorities. However, new programs will be required to apply using the new 1995 priorities.

2. Grant Timeline

The Corporation received a number of comments suggesting that the application deadlines were too short, and that such short time lines would adversely affect the quality of the proposals submitted to the Corporation. Accordingly, the Corporation has extended the application due dates as far as possible and published the new dates in the January 23, 1995 **Federal Register**. For purposes of the AmeriCorps*USA State grant competition, May 1, 1995 is the new due date for the renewals and new applications. For purposes of the AmeriCorps*USA National Direct grant competition, new applications are due on May 9, 1995, and renewal and expansion applications are due on April 18, 1995.

3. Program Expansion

The Corporation initially proposed that an AmeriCorps*USA State program requesting expansion exceeding 25% of the year-one budget or expansion to base the program in two different cities would be considered a new program and would not receive a priority. In response to public comments, the Corporation has amended its language on this policy to clarify that if a program wants to expand beyond 25% of their year-one budget, only that portion that exceeds 25% must be submitted as a new application, following new application instructions. The Corporation's desire to moderate expansion remains for three reasons: (1) to stress quality before quantity, (2) to create a solid base for future replication, and (3) to ensure, because of the limited funds available to the Corporation, that funds remain to support programs that meet 1995 priorities.

The rule for AmeriCorps*USA Direct is similar to rule for AmeriCorps*USA State with one exception. Programs may expand up to 25% of their year-one budget or $500,000, which ever is greater. Only that portion that exceeds 25% or $500,000 must be submitted as a new application, following new application instructions.

4. Conversion of Planning Grants to Operating Grants

Several comments requested clarification of the Corporations policy on converting planning grants to operating grants. The Corporation, in the October 27, 1994 **Federal Register**, had proposed the following language: ''The Corporation is recommending that State Commissions give priority to converting formula-funded planning grants to operational programs over new applications, if the proposals meet quality standards.'' In order to give greater clarity, the Corporation has amended the language to read as follows:

The Corporation recommends that State Commissions give a priority for funding to converting planning grants to operating programs. As in all other cases, this preference should apply only if the programs meet quality standards. The Corporation will consider these as new applications, and they will be evaluated by peer review panels. If they meet quality standards, they will receive preference over other new applications. Because they were approved under 1994 priorities, those planning grants that the state submits in the competitive pool may choose to meet 1994 or 1995 priorities. However, the Corporation strongly urges that both formula and competitive proposals meet 1995 priorities.

The changes allow flexibility for planning grants to apply under either the 1994 or the 1995 priorities and gives them preference over new applications.

5. Concentration

A number of comments recommended that the Corporation revise its policy on concentration, stating that the language initially proposed in the **Federal Register** discriminated against rural areas and was overly prescriptive. The preference for concentration is designed to achieve significant impacts from direct service activities, to create a strong sense of national identity with AmeriCorps, and to be cost-effective; it was never intended to be discriminatory or overly prescriptive. Accordingly, the language has been clarified as follows: ''The Corporation is seeking applications that focus activities within a limited number of priorities and have a more narrow geographic focus or placement strategy. * * * This preference is not intended to discourage comprehensive approaches to community problem-solving or to discourage programs in rural areas. * * * In addition, programs can bring AmeriCorps Members together for training and service and can define program size to be consistent with the community.'' In other words, the Corporation has left it up to the applicant to define ''community.'' For example, if the community is a rural one, then ''concentration of Members'' can be defined in proportion to the rural area. In addition, while the Corporation does not object to individual placement per se, it funded a disproportionate

number of individual placement models in 1994 and, for this grant cycle, discourages programs that place AmeriCorps Members individually across many organizations without providing opportunities for them to meet, share experiences and reflection, and learn from one another to better understand the collective impact they have on their community.

6. Localities for Concentration

A number of comments recommended that the Corporation retain the policy of providing special consideration for projects in areas that are environmentally distressed or adversely affected by Federal actions related to the management of Federal lands resulting in significant regional job losses and economic dislocation. Accordingly, the Corporation has adopted language to this end. ''If empowerment zones and enterprise communities have been officially designated by HUD by February 28, 1995, the Corporation will give preference to applicants who propose to sponsor AmeriCorps service activities in those areas. The Corporation will also give preference to areas impacted by military downsizing.'' HUD has officially designated empowerment zones and enterprise communities. Programs proposing to operate in these areas will receive a preference.

7. Special Consideration for Past Corporation-Funded Programs

Several comments requested a change in Corporation policy regarding special consideration for past Corporation funded programs. The comments suggested that the Corporation allow the programs to apply as renewals and not new applicants, and that the Corporation waive the 15% local match. The Corporation has declined to make these changes. Accordingly, the policy reads as follows:

The following programs were funded previously, but are no longer eligible to apply directly to the Corporation. If these programs apply through the state process and if they are determined to be high quality, they will receive preference over other high quality programs during the Corporation selection process. Because their current funding is based upon 1994 priorities, they may apply under either 1994 or 1995 priorities, but are encouraged to address those for 1995. They must apply to the state using the application instructions for new programs.

- Defense Conversion Assistance Programs.
- Summer of Safety Continuation Programs.
- Subtitle D programs originally funded for two-year grants under the National and Community Service Act of 1990. These programs did not compete under the 1994 funding cycle.
- Subtitle H Programs of the National and Community Service Act of 1993 renewed from Subtitle E programs under the National and Community Service Act of 1990.

By way of further explanation, the requirement that Subtitle D programs funded with two-year grants apply as new applicants refers to those subtitle D programs that were funded by the former Commission on National and Community Service for the 1993 and 1994 funding cycles.

8. Other

A number of other comments concerned the following issues: Health Care Eligibility—Request to allow Members to include dependents on the AmeriCorps health plan at the cost of the Member. Child Care Eligibility—Request for a more inclusive policy that is not based on income levels, or pro-rating awards based on income. Education Awards Only Requirements—Request that the Corporation cover health care and child care costs for programs receiving Education Awards Only. These comments concern statutory provisions which cannot be changed by regulations. They can only be changed through amendments to the legislation. The Corporation is currently considering possible amendments to our legislation, and the above comments will be considered.

Authority: 42 U.S.C. 12501 et seq.

Dated: February 6, 1995.

Terry Russell,

General Counsel, Corporation for National Service.

[FR Doc. 95–3301 Filed 2–8–95; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board Meeting

The Combat Mission Panel of the USAF Scientific Advisory Board will meet on 3 March 1995 at Langley AFB, VA from 8:00 a.m. to 5:00 p.m.

The purpose of the meeting is to provide advice and guidance to the ACC Commander on air combat operations.

The meeting will be closed to the public in accordance with Section 552b of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–8845.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 95–3265 Filed 2–8–95; 8:45 am]

BILLING CODE 3910–01–P

Department of the Army

Army Science Board; Notice of Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of meeting: 9 March 1995.

Time of meeting: 0900–1600.

Place: Arlington, VA.

Agenda

The Army Science Board's (ASB) Independent Assessment Group on ''Army Family Housing'' will meet to review current AFH policies and issues and to examine new business and privatization initiatives. This meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (703) 695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 95–3260 Filed 2–8–95; 8:45 am]

BILLING CODE 3710–08–M

Name Change

AGENCY: U.S. Army, DOD.

ACTION: Notice.

SUMMARY: The name of the U.S. Army Tank-Automotive Command, Warren, Michigan 48397–5000 has been changed to U.S. Army-Automotive and Armaments Command, Warren, Michigan 48397–5000 .

ADDRESSES: U.S. Army Federal Register Liaison Officer, HQ USAPPC, Room 1050, Hoffman Building 1, Alexandria, VA 22331–0302.

FOR FURTHER INFORMATION CONTACT: Kenneth L. Denton, (703) 325–6277.

SUPPLEMENTARY INFORMATION: Name change reflects the additional armament/chemical materiel management mission transferred from AMCCOM to TACOM via the Armament Research, Development and Engineering Center (ARDEC), and the Armament and

Chemical Acquisition and Logistics Activity.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 95–3267 Filed 2–8–95; 8:45 am]

BILLING CODE 3710–08–M

Patient Availability for Exclusive or Partially Exclusive Licensing of U.S. Patent

AGENCY: U.S. Army Test and Evaluation Command, White Sands Missile Range—Electronic Proving Ground, DOD.

ACTION: Notice of availability.

SUMMARY: In accordance with 37 CFR 404.7(a)(1)(i), announcement is made of the following U.S. Patent for licensing. These patents are assigned to the United States of America as represented by the Secretary of the Army, Washington, DC. Any license granted shall comply with 35 U.S.C. 209 and 37 CFR Part 404

U.S. Patent 5,341,146, titled ''Covert Remote Electronic Warfare Simulator.''

ADDRESSES: Commander, White Sands Missile Range, Electronic Proving Ground, ATTN: STEWS–EPG–TD, Fort Huachuca, AZ 85613–7110.

FOR FURTHER INFORMATION CONTACT: Mr. Michael J. O'Connor (602) 538–6068, or FAX (602) 538–6361.

SUPPLEMENTARY INFORMATION: This patent concerns a remotely controlled device which includes receiving and signal processing apparatus for simulating electromagnetic jamming signals. The simulator provides low power rf signals representative of a variety of jamming waveforms to a ''victim'' receiver. It includes variables representative of propagation effects and means to replay stored data representing the resulting signal(s) for detailed analysis. The technology is applicable to resting electronic systems that must work in a jamming environment and training operators of such equipment

Under authority of Section 11(a)(2) of the Federal Technology Transfer Act of 1986 (Public Law 99–502) and Section 207 of Title 35, United States Code, the Department of the Army as represented by the U.S. Army White Sands Missile Range—Electronic Proving Ground wishes to license the above mentioned United States Patent in a non-exclusive, exclusive, or partially exclusive manner to any party interested in manufacturing and selling devices covered by the above-mentioned patent.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 95–3266 Filed 2–8–95; 8:45 am]

BILLING CODE 3710–08–M

Intent To Prepare an Environmental Impact Statement for the Proposed Maple River Dam Project in Cass County, North Dakota

AGENCY: U.S. Army Corps of Engineers, Omaha District, DOD.

ACTION: Notice of intent.

SUMMARY: The proposed action is to construct a 70-foot high zoned earth embankment dam on the Maple River in Cass County, North Dakota. The dam would be 1850 feet long with a top width of 30 feet and an emergency spillway consisting of a concrete chute to handle the 100-year events; a second stage emergency spillway consisting of a 1300-foot earthen cut in the right abutment which will handle the 200± year flows. The project would be operated essentially as a dry dam, with a very small pool. The proposed dam and spillways would be located primarily in the NE ¼ Sec 14, T 137N, R 54 W of Cass County. This location is approximately 8 miles northeast of Enderlin, North Dakota. The dam and reservoir would reduce the frequency of the full range of potential floods and thereby reduce the potential damage associated with these floods. Reduction in flood flows and damages would be the greatest in the Maple River and Sheyenne River valleys downstream of the project. The primary areas affected by the flooding are urban, agricultural, and environmental in nature. Approximately 15,000 acres are subject to flooding in addition to the urban areas of Durbin, and Mapleton, North Dakota as well as West Fargo and Harwood, North Dakota.

Alternatives which are anticipated to be evaluated include similar dam sites and combinations of multiple dam sites as well as ''wet vs. dry'' dam concepts. The ''no action'' alternatives will also be evaluated.

DATE OF SCOPING MEETING: Public Scoping Meeting, March 15, 1995, 7 p.m., Casselton Community Center, 701—1st Street North, Casselton, North Dakota.

ADDRESSES: Omaha District, Army Corps of Engineers, ATTN: CEMRO–PD–M, 215 North 17th Street, Omaha, Nebraska 68102–4978.

FOR FURTHER INFORMATION CONTACT: Mr. Robert S. Nebel, Chief, Environmental Analysis Branch, Planning Division (402) 221–4598.

SUPPLEMENTARY INFORMATION:

Future Schedule

Following review of comments received during scoping, data collection and analysis will begin for the Draft Environmental Impact Statement (DEIS). The Corps anticipates that the DEIS will be released for public review in October 1995. A final Environmental Impact Statement is anticipated to be completed in early 1996.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 95–3261 Filed 2–8–95; 8:45 am]

BILLING CODE 3710–62–M

DEPARTMENT OF EDUCATION

Advisory Committee on Student Financial Assistance; Meeting

AGENCY: Advisory Committee on Student Financial Assistance, Education.

ACTION: Notice of upcoming meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting sponsored by the Advisory Committee on Student Finance Assistance. This notice also describes the functions of the Committee. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public.

DATES AND TIMES: February 27, 1995, beginning at 9:00 a.m. and ending at 5:00 p.m.; and February 28, 1995, beginning at 9:30 a.m. and ending at 12:00 noon.

ADDRESSES: Dupont Plaza Hotel, 1500 New Hampshire Avenue NW., Washington, D.C. 20036.

FOR FURTHER INFORMATION CONTACT: Dr. Brian K. Fitzgerald, Staff Director, Advisory Committee on Student Financial Assistance, Portals Buildings, 1280 Maryland Avenue SW., Suite 601, Washington, D.C. 20202–7582 (202) 708–7439.

SUPPLEMENTARY INFORMATION: The Advisory Committee on Student Financial Assistance is established under Section 491 of the Higher Education Act of 1965 as amended by Public Law 100–50 (20 U.S.C. 1098). The Advisory Committee is established to provide advice and counsel to the Congress and the Secretary of Education on student financial aid matters, including providing technical expertise with regard to systems of need analysis and application forms, making recommendations that will result in the maintenance of access to postsecondary education for low- and middle-income students, conducting a study of institutional lending in the Stafford Student Loan Program, and an in-depth study of student loan simplification. As

a result of passage of the Omnibus Budget Reconciliation Act (OBRA) of 1993, the Congress also directed the Advisory Committee to conduct an evaluation of the Ford Federal Direct Loan Program (FDLP) and the Federal Family Education Loan Program (FFELP) and submit a report to Congress and the Secretary on not less than an annual basis on the operation of both programs.

The proposed agenda includes (a) a discussion session on legislative priorities in Congress; (b) an update on recent ED legislative proposals and regulatory relief initiatives; (c) an update on the progress of direct lending; and (d) an Advisory Committee regulatory update and planning session of the upcoming year's agenda.

The Advisory Committee will meet in Washington, D.C. on February 27, 1995, from 9:00 a.m. to 5:00 p.m., and on February 28, from 9:30 a.m. to 12:00 noon. Space is limited and you are encouraged to register early if you plan to attend. To register, please contact the Advisory Committee staff office at (202) 708–7439. The registration deadline is February 22, 1995.

Records are kept of all Committee proceedings, and are available for public inspection at the Office of the Advisory Committee on Student Financial Assistance, Portals Building, 1280 Maryland Avenue SW., Suite 601, Washington, D.C. from the hours of 9:00 a.m. to 5:30 p.m., weekdays except Federal holidays.

Dated: February 6, 1995.

Ruth Beer Bletzinger,

Associate Director, Advisory Committee, on Student Financial Assistance.

[FR Doc. 95–3219 Filed 2–8–95; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP95–149–000]

ANR Pipeline Co.; Notice of Proposed Changes in FERC Gas Tariff

February 3, 1995.

Take notice that on January 31, 1995, ANR Pipeline Company (ANR), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with a proposed effective date of February 1, 1995:

Fifth Revised Sheet No. 8
Seventh Revised Sheet No. 9
Seventh Revised Sheet No. 13
Seventh Revised Sheet No. 16
Seventh Revised Sheet No. 18

ANR states that the above-referenced tariff sheets are being filed to commence recovery of approximately $22.2 million of pricing differential (PD) costs that have been incurred by ANR as a result of the implementation of Order Nos. 636, et seq. ANR proposes a reservation fee surcharge applicable to its Part 284 firm transportation customers to recover ninety percent (90%) of the PD costs, and an adjustment to the maximum base tariff rates applicable to Rate Schedule ITS and overrun service rendered pursuant to Rate Schedule FTS–2, so as to recover the remaining ten percent (10%).

ANR states that all of its Volume No. 1 FERC Gas Tariff customers and interested State Commissions have been mailed a copy of this filing.

Any person desiring to be heard to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E. Washington, D.C. 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before February 10, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestant parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of the application are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–3187 Filed 2–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. GT95–14–000 and GT95–14–001]

Columbia Gas Transmission Corp.; Notice of Refund Report

February 3, 1995.

Take notice that on December 28, 1994, Columbia Gas Transmission Corporation (Columbia), tendered for filing a refund report for the lump sum refunds in the amount of $385,035.98 made by Columbia on October 17, 1994, to disburse refunds received from Texas Eastern Transmission Corporation for Docket Nos. RP91–72, *et al.*

On January 30, 1995, Columbia tendered for filing a supplemental refund report in Docket No. GT95–14–001. Columbia states that this filing is being tendered to report to the Federal Energy Regulatory Commission, and to all parties in this docket, additional information about the refund.

Columbia states that copies of the report are being mailed to interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules and Practice and Procedure. All such motions or protests should be filed on or before February 10, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of Columbia's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–3199 Filed 2–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. GT95–13–000 and GT95–13–001]

Columbia Gas Transmission Corp.; Notice of Refund Report

February 3, 1995.

Take notice that on December 22, 1994, Columbia Gas Transmission Corporation (Columbia), tendered for filing a refund report for the lump sum refunds in the amount of $5,457,136.00 made by Columbia on September 23, 1994, to disburse refunds received from Texas Eastern Transmission Corporation attributable to rates charged under Docket Nos. RP91–72, *et al.*

On January 30, 1995, Columbia tendered for filing a supplemental refund report in Docket No. GT95–13–001. Columbia states that this filing is being tendered to report to the Commission, and to all parties in this docket, additional information about the refund.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules and Practice and Procedure. All such motions or protests should be filed on or before February 10, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings.

Any person wishing to become a party must file a motion to intervene. Copies of Columbia's filings are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–3200 Filed 2–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. GT95–12–000 and GT95–12–001]

Columbia Gas Transmission Corporation; Notice of Refund Report

February 3, 1995.

Take notice that on December 20, 1994, Columbia Gas Transmission Corporation (Columbia), tendered for filing a refund report for the lump sum refunds made by Columbia on September 30, 1994, in the amount of $14,444,180.00 to disburse refunds received from Texas Gas Transmission Corporation for rates paid under Docket Nos. RP91–100, RP91–101, RP91–102, and RP91–134.

On January 30, 1995, Columbia tendered for filing a supplemental refund report in Docket No. GT95–12–001. Columbia states that this filing is being tendered to report to the Commission, and to all parties in this docket, additional information about the refunds made on September 30, 1994.

Columbia states that copies of the report are being mailed to interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules and Practice and Procedure. All such motions or protests should be filed on or before February 10, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of Columbia's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–3201 Filed 2–8–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP91–174–000]

Great Lakes Gas Transmission Limited Partnership; Notice of Semi-Annual Transporter's Use Report

February 3, 1995.

Take notice that on January 31, 1995, Great Lakes Gas Transmission Limited Partnership (Great Lakes), filed with the Federal Energy Regulatory Commission (Commission) its Semi-Annual Transporter's Use Report.

Great Lakes states that the purpose of its filing is to comply with Section 4.3 of Rate Schedules FT and IT of its FERC Gas Tariff, Second Revised Volume No. 1. Great Lakes further states that the above-described tariff provisions require Great Lakes to file, each January 31 and July 31, workpapers setting forth the calculations of the monthly Transporter's Use percentages applicable during each month of the immediately preceding six-month period.

Great Lakes states that a copy of its filing was posted and that copies thereof were served on each of its customers, the Public Service Commissions of the States of Minnesota, Wisconsin and Michigan, and on all remaining parties listed on the service list maintained by the Commission's Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE, Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before February 10, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Commission's Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–3192 Filed 2–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–184–000]

Natural Gas Pipeline Company of America; Notice of Application

February 3, 1995.

Take notice that on January 30, 1995, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP95–184–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon a transportation service provided under Natural's Rate Schedule X–27 for Trident NGL, Inc. (Trident) which was authorized in Docket No. CP71–51, all as more fully set forth in the application on file with the Commission and open to public inspection.

Natural states that pursuant to a gas transportation agreement dated August 14, 1970 (Agreement) between Natural and Trident (formerly Cities Service Oil Company) (Natural's Rate Schedule X–27), Natural received up to 500 Mcf of natural gas per day from the outlet of the Bluitt Gasoline Plant in Roosevelt County, New Mexico and delivered such gas to Trident at an interconnection also in Roosevelt County, New Mexico.

Natural further states that by a letter by Trident to Natural dated December 29, 1994, Trident notified Natural that Natural's transportation of gas for Trident under the Agreement and Natural's Rate Schedule X–27 was no longer required. Therefore, Natural is requesting authority to abandon its transportation service for Trident performed under the Agreement and Natural's Rate Schedule X–27.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 24, 1995, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience

and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Natural to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 95–3196 Filed 2–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–152–000]

NorAm Gas Transmission Co.; Notice of Proposed Changes in FERC Gas Tariff

February 3, 1995.

Take notice that on February 1, 1995, NorAm Gas Transmission Company (NGT) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, First Revised Sheet No. 168, Original Sheet No. 168A and First Revised Sheet No. 233 and First Revised Sheet No. 233A, to become effective February 2, 1995.

NGT states that these revised tariff sheets modify Section 12.1 of NGT's General Terms and Conditions to provide that the compressor fuel assessment or retention percentage provisions of the FT, IT, or NNTS Rate Schedule, whichever is applicable, will not apply to transactions in which gas is both received from and delivered to points within the Perryville Hub and to which no compression is required to effectuate these transactions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such motions or protests should be filed on or before February 10, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–3184 Filed 2–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–343–003]

NorAm Gas Transmission Co.; Notice of Filing

February 3, 1995.

Take notice that on January 31, 1995, NorAm Gas Transmission Company (NGT) moved to place into effect at the end of the suspension period the rates and tariff sheets in NGT's August 1, 1994 filing in this proceeding.

NGT states that its motion rate filing complies with the Commission's August 31, 1994 suspension order, and that it reflects the elections made by NGT's customers during the open season held to permit customers to select receipt points under NGT's zone rates. Pursuant to the Commission's August 31 Order, NGT's motion rate filing would become effective on February 1, 1995.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before February 10, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–3189 Filed 2–8–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–190–000]

Northwest Pipeline Corp.; Notice of Application

February 3, 1995.

Take notice that on January 31, 1995, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158, filed in Docket No. CP95–190–000 an application pursuant to Section 7(c) of the National Gas Act for a certificate of public convenience and necessity authorizing it to construct and operate certain pipeline loop facilities located in Whatcom County, Washington to enhance the reliability of service to its existing customers, all as more fully set forth in the application on file with the Commission and open to public inspection.

Northwest proposes to construct and operate 550 feet of 30-inch pipeline loop and associated valves beginning at the outlet of its existing Sumas Meter Station and extending to the point of origin of the existing 30-inch mainline loop upstream of its Sumas Compressor Station ''B'' Plant compressors all located within its existing Sumas Compressor Station site (milepost 1484.5). Northwest states that the proposed pipeline looping will complete its 30-inch mainline loop between its Sumas Meter Station and its Sumas Compressor Station and will enhance the reliability of service to its shippers receiving Canadian gas supplies. Northwest estimates that the cost of the proposed facilities will be $553,200.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 24, 1995, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Northwest to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 95–3197 Filed 2–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–353–001]

Questar Pipeline Co.; Notice of Amendment to Application

February 3, 1995.

Take notice that on February 1, 1995, Questar Pipeline Company (Questar), 79 South State Street, Salt Lake City, Utah 84111, filed an amendment to its original application in Docket No. CP94–353–000 which was filed pursuant to Section 7(b) of the Natural Gas Act requesting authority to abandon by reclassification to a nonjurisdictional gathering designation its Jurisdictional Lateral (J.L.) No. 21 and Lateral No. 495.

Questar states that it is amending its application pursuant to Section 7(b) of the Natural Gas Act by requesting authority to abandon, by sale, J.L. Nos. 21 and 495 to Luff Exploration Company (Luff). Questar states the sale to Luff will be made pursuant to the terms and conditions of a Facility Sales Agreement dated December 20, 1994. The net book value of the plant investment associated with the facilities proposed to be sold is approximately $18,550. Questar represents that Luff has stated it will enter into replacement-type gathering agreements with all existing customers to ensure the continuity of gathering services under reasonable terms, conditions and rates.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before February 24, 1995, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. All persons who have heretofore filed need not file again.

Lois D. Cashell,

Secretary.

[FR Doc. 95–3195 Filed 2–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP94–67–018, and RP95–59–001]

Southern Natural Gas Co.; Notice of GSR Revised Tariff Sheets

February 3, 1995.

Take notice that on January 31, 1995, Southern Natural Gas Company (Southern) submitted the following tariff sheets to its FERC Gas Tariff, Seventh Revised Volume No. 1, to reflect changes to its FT/FT–NN GSR billing determinants effective for each month of 1994 and January 1, 1995:

Effective January 1, 1994
- Third Sub. First Revised Sheet No. 29
- Third Sub. First Revised Sheet No. 30
- Third Sub. First Revised Sheet No. 31

Effective March 1, 1994
- Second Sub. Third Revised Sheet No. 29
- Second Sub. Third Revised Sheet No. 30
- Second Sub. Third Revised Sheet No. 31

Effective April 1, 1994
- Second Sub. Fourth Revised Sheet No. 29
- Second Sub. Fourth Revised Sheet No. 30
- Second Sub. Fourth Revised Sheet No. 31

Effective May 1, 1994
- First Sub. Fifth Revised Sheet No. 29
- First Sub. Fifth Revised Sheet No. 30
- First Sub. Fifth Revised Sheet No. 31

Effective June 1, 1994
- First Sub. Sixth Revised Sheet No. 29
- First Sub. Sixth Revised Sheet No. 30
- First Sub. Sixth Revised Sheet No. 31

Effective July 1, 1994
- First Sub. Seventh Revised Sheet No. 29
- First Sub. Seventh Revised Sheet No. 30
- First Sub. Seventh Revised Sheet No. 31

Effective August 1, 1994
- First Sub. Eighth Revised Sheet No. 29
- First Sub. Eighth Revised Sheet No. 30
- First Sub. Eighth Revised Sheet No. 31

Effective September 1, 1994
- Second Sub. Ninth Revised Sheet No. 29
- Second Sub. Ninth Revised Sheet No. 30
- Second Sub. Ninth Revised Sheet No. 31

Effective October 1, 1994
- Second Sub. Tenth Revised Sheet No. 29
- Second Sub. Tenth Revised Sheet No. 30
- Second Sub. Tenth Revised Sheet No. 31

Effective November 1, 1994
- First Sub. Eleventh Revised Sheet No. 29
- First Sub. Eleventh Revised Sheet No. 30
- First Sub. Eleventh Revised Sheet No. 31

January 1, 1995
- Twelfth Revised Sheet No. 29
- Twelfth Revised Sheet No. 30
- Twelfth Revised Sheet No. 31

Southern states that the billing determinants are amended per the outcome of a Commission scheduled technical conference which developed proper procedures for developing such units.

Southern states that copies of the filing were served upon Southern's intervening customers and interested state commission's

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before February 10, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of Southern's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–3190 Filed 2–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP95–63–000 RP95–64–000 RP95–88–000 RP95–112–000 RP93–148–004 RP95–62–000 RP95–62–001 RP94–276–000 (unconsolidated)]

Tennessee Gas Pipeline Co.; Notice of Technical Conference

February 3, 1995.

Staff is convening a technical conference in the above dockets starting at 9:00 am on March 6, 1995, to explore and possibly resolve issues raised by the filings in the various dockets. Because of the large number of issues to be covered, staff is prepared for the conference to go through the entire week if necessary to cover the issues. An agenda and location for the conference will be announced in a subsequent notice. In order to have a sufficiently sized room, it is requested that any party planning to attend the conference, notify staff by February 15, 1995, that they will be attending and the number of representatives. Parties desiring to make presentations at the conference are encouraged to join with others sharing the same interest and inform staff of their requests as soon as possible. Any questions concerning the conference should be directed to Christopher Young at (202) 208–0620 or Robert McLean at (202) 208–1179.

Lois D. Cashell,

Secretary.

[FR Doc. 95–3220 Filed 2–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–148–000]

Texas Gas Transmission Corp.; Notice of Cash-Out Report

February 3, 1995.

Take notice that on January 31, 1995, Texas Gas Transmission Corporation (Texas Gas), in compliance with the order of the Commission issued December 16, 1993 in Texas Gas's Order No. 636 restructuring proceeding, in

Docket No. RS92–24, *et al.*, submits for filing a report which compares its cash-out revenues with cash-out costs incurred for the annual period November 1, 1993 through October 31, 1994.

Texas Gas states that copies of the filing are being mailed to each of Texas Gas's customers, the parties in Docket No. RS92–24–000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E. Washington, D.C. 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before February 28, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–3188 Filed 2–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM95–7–29–001]

Transcontinental Gas Pipe Line Corp.; Notice of Proposed Changes in FERC Gas Tariff

February 3, 1995.

Take notice that on January 31, 1995 Transcontinental Gas Pipe Line Corporation (TGPL) tendered for filing Twentieth Revised Fourth Revised Sheet No. 50 to its FERC Gas Tariff, Third Revised Volume No. 1, which tariff sheet is proposed to be effective February 1, 1995.

TGPL states that the purpose of the instant filing is to supplement TGPL's FT–NT tracking filing on January 20, 1995 in Docket No. TM95–7–29–000 (January 20 Filing) which filing is proposed to be effective January 1, 1995. The instant filing is required in order that the revised Rate Schedule FT–NT rates reflected in TGPL's January 20 Filing be reflected on Sheet No. 50 effective February 1, 1995. In that regard, on December 30, 1994 TGPL filed in Docket No. RP95–113 (December 30 Filing) revised tariff sheets (including a revised Sheet No. 50) which, among other things, eliminated expired producer settlement payment recovery provisions effective February 1, 1995. The December 30 Filing was accepted to be effective February 1, 1995 by a letter order issued by the Office of Pipeline Regulation on January 23, 1995.

TGPL states that Tariff Sheet No. 50 included in the December 30 Filing reflects the FT–NT rates in effect prior to TGPL's January 20 Filing. Therefore, the instant filing is being made to integrate the revised FT–NT rates proposed effective January 1, 1995 in TGPL's January 20 Filing with the revisions approved in the December 30 Filing effective as of February 1, 1995.

TGPL states that copies of the instant filing are being mailed to its FT–NT customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E. Washington, D.C. 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before February 10, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–3183 Filed 2–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–150–000]

Transcontinental Gas Pipe Line Corp.; Noticed of Tariff Filing

February 3, 1995.

Take notice that on January 31, 1995, Transcontinental Gas Pipe Line Corporation (TGPL), tendered for filing certain revised tariff sheets to its FERC Gas Tariff, Original Volume No. 2, which tariff sheets are enumerated in the appendix attached to the filing. Such tariff sheets are proposed to be effective February 1, 1995.

TGPL states that the purpose of the instant filing is to revise certain tariff sheets to eliminate expired producer settlement payment recovery provisions.

TGPL states that copies of the instant filing are being mailed to customers, State Commissions and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E. Washington, D.C. 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before February 10, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–3186 Filed 2–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MT95–5–000]

Transcontinental Gas Pipe Line Corp.; Notice of Proposed Changes in FERC Gas Tariff

February 3, 1995.

Take notice that on January 31, 1995, Transcontinental Gas Pipe Line Corporation (TGPL) tendered for filing certain revised tariff sheets to its FERC Gas Tariff, Third Revised Volume No. 1, which tariff sheets are enumerated in Appendix A attached to the filing. Such tariff sheets are proposed to be effective on February 1, 1995.

TGPL states that the purpose of the instant filing is to revise currently effective tariff provisions to comport with the requirements of Order Nos. 566 and 566–A. TGPL has requested a waiver of the notice requirements of Section 154.22 of the Commission's Regulations to the extent necessary to permit the tariff sheets to become effective February 1, 1995.

TGPL states that copies of the filing are being mailed to each of its customers, State Commissions and other interested parties.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before February 10, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public

inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–3194 Filed 2–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–151–000]

Trunkline Gas Co.; Notice of Proposed Changes in FERC Gas Tariff

February 3, 1995.

Take notice that on February 1, 1995, Trunkline Gas Company (Trunkline) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets, with a proposed effective date of March 3, 1995:

Second Revised Sheet No. 36
First Revised Sheet No. 57
First Revised Sheet No. 63
Third Revised Sheet No. 162
Second Revised Sheet No. 397

Trunkline states that these revised tariff sheets update Trunkline's tariff for personnel and telephone changes and provide for No Notice Service and Small Shipper Transportation service to be available to any party that qualifies for the service.

Trunkline states that copies of this filing are being mailed to all affected shippers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before February 10, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–3185 Filed 2–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP92–122–003]

Trunkline LNG Co.; Notice of Annual Reconciliation Report

February 3, 1995.

Take notice that on January 31, 1995, Trunkline LNG Company (TLC) tendered for filing working papers reflecting its second annual reconciliation report.

TLC states that the information is submitted pursuant to Article VIII, Section 4 of the Stipulation and Agreement in the above-captioned proceeding which requires TLC to submit, on an annual basis, a report of the cost and revenues which result from the operation of the PLNG–2 tariff dated June 26,1987, as amended December 1, 1989.

TLC states that copies of this filing have been served on all participants in the proceeding and applicable state regulatory agencies

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before February 10, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make Protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–3191 Filed 2–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP91–54–011]

Trunkline Gas Co.; Notice of Annual Reconciliation Report

February 3, 1995.

Take notice that on January 31, 1995, Trunkline Gas Company (Trunkline) tendered for filing working papers reflecting its third annual take-or-pay volumetric surcharge reconciliation.

Trunkline states that the information is submitted pursuant to Article II, Section 8 of the Stipulation and Agreement in the above-captioned proceeding which requires Trunkline to submit, on an annual basis, a report of the take-or-pay volumetric surcharge amounts collected from its customers.

Trunkline states that copies of this filing have been served on all participants in the proceeding and applicable state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before February 10, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–3193 Filed 2–8–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT95–20–000]

Trunkline Gas Co.; Notice of Proposed Changes in FERC Gas Tariff

February 3, 1995.

Take notice that on February 1, 1995, Trunkline Gas Company (Trunkline) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, revised tariff sheets, as listed on Appendix A attached to the filing, proposed to be effective November 1, 1994, December 1, 1994 and January 1, 1995.

Trunkline states that this filing is being made in compliance with Section 154.41(b) of the Commission's Regulations. Trunkline states that the revised tariff sheets reflects updates to the Index of Firm Customers.

Trunkline states that copies of this filing are being mailed to all affected shippers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before February 10, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are

available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–3198 Filed 2–8–95; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5150–7]

Public Water Supply Supervision Program; Program Revision for the States of Arkansas, Louisiana, New Mexico, Oklahoma and Texas

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given that the States of Arkansas, Louisiana, New Mexico, Oklahoma and Texas are revising their approved State Public Water Supply Supervision Primacy Program. These States have adopted drinking water regulations for (1) synthetic organic chemicals, volatile organic chemicals, inorganic chemicals, and monitoring for unregulated contaminants that correspond to the National Primary and Secondary Drinking Water Regulations for synthetic organic chemicals, volatile organic chemicals, inorganic chemicals, monitoring for unregulated contaminants, and National Primary Drinking Water Regulations Implementation promulgated by EPA on January 30, 1991 (56 FR 3526), July 1, 1991 (56 FR 30266), and July 17, 1992 (57 FR 31776). EPA has determined that these State program revisions are no less stringent than the corresponding Federal regulations. Therefore, EPA has tentatively decided to approve these State program revisions.

All interested parties are invited to request a public hearing. A request for a public hearing must be submitted by March 13, 1995 to the Regional Administrator at the address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by March 13, 1995, a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become effective on March 13, 1995.

A request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing. (2) A brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such hearing. (3) The signature of the individual making the request; or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 9:00 a.m. and 3:30 p.m., Monday through Friday, at the following offices:

Arkansas Department of Health, Engineering Division, 4815 West Markham Street, Little Rock, AR 75205

Louisiana Department of Health and Hospitals, Office of Public Health—Engineering, 325 Loyola Avenue, New Orleans, LA 70112

New Mexico Environment Department, Drinking Water Bureau, 2052 Galisteo, Suite B, Santa Fe, NM 87501

Oklahoma Department of Environmental Quality, Water Quality Division, 1000 N.E. 10th Street, Oklahoma City, OK 73117

Texas Natural Resource Conservation Commission, Water Utilities Division, 12015 Park 35 Circle, Bldg F, Suite 3202, Austin, TX 78753

Regional Administrator, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733

FOR FURTHER INFORMATION CONTACT: O. Thomas Love, Jr., EPA, Region 6, Water Supply Branch, at the Dallas address given above; telephone (214) 665–7150.

(Sec. 1413 of the Safe Drinking Water Act, as amended, (1986) and 40 CFR 142.10 of the National Primary Drinking Water Regulations)

Dated: January 26, 1995.

Allyn M. Davis,

Acting Regional Administrator.

[FR Doc. 95–3293 Filed 2–8–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5150–8]

Office of Research and Development Office of Exploratory Research; Reducing Uncertainty in Risk Assessment and Improving Risk Reduction Approaches

AGENCY: Environmental Protection Agency.

ACTION: 1995 Grants for Research.

SUMMARY: The U.S. Environmental Protection Agency (EPA) invites research grant applications in four areas of special interest to its mission:

- Human health risk assessment.
- Indoor air quality in large office buildings.
- Air pollutants (particulate matter, tropospheric ozone, and toxics).
- Regional hydrologic vulnerability to global climate change.

This invitation provides relevant background information, summarizes EPA interests in the four topic areas, and describes the application and review process.

Background

EPA has increased funding for its investigator-initiated research grants in fiscal year 1995. EPA therefore is issuing two additional Requests for Applications (RFAs), of which this is one. The other is a joint solicitation with the National Science Foundation (NSF) that identifies three areas of interest to both agencies—water and watersheds; valuation and environmental policy; and technology for a sustainable environment (pollution prevention).

Information on the NSF/EPA solicitation can be obtained by contacting Dr. Penny Firth at NSF, (703) 306–1480, or Dr. Melinda McClanahan at EPA, (202) 260–7473.

EPA Mission and R&D Strategy

The mission of EPA—and its unique role—is the joint protection of environmental quality and human health through effective regulations and other policy decisions. Achievement of this mission requires the application of sound science to the assessment of environmental problems and evaluation of solutions. Moreover, a significant challenge is to support long-term research that anticipates future environmental problems and strives to fill significant gaps in knowledge relevant to meeting regulatory goals.

This Request for Applications and the joint EPA/NSF solicitation are important steps toward ensuring that EPA is positioned to provide national leadership as the country enters a new generation of environmental protection.

EPA recently reorganized its research programs to focus on major areas of uncertainty associated with assessment and reduction of risks to human health and ecosystems. Through its laboratories and through grants to universities and other not-for-profit institutions, EPA will conduct and support research in the subject matter areas where regulatory officials face the most significant gaps in knowledge about environmental risks. Because risk is a function of both hazard and exposure, EPA will promote research in both domains—according highest

priority to those areas where risk assessors are most in need of new concepts, data, and methods. At the same time, EPA will foster the development and evaluation of new risk reduction technologies across a spectrum, from pollution prevention through end-of-pipe controls, to remediation and monitoring.

Research Topics of Interest

1. Human Health Risk Assessment

As described in the recent NRC report entitled ''Science and Judgement in Risk Assessment,'' EPA uses health risk assessments to establish exposure limits and set priorities for regulatory activities. However, EPA is hampered by gaps in methods, models, and data needed to support risk assessments. In many cases default assumptions are used to extrapolate from animals to humans, from high to low doses, from acute to chronic exposures, and from lowest effect levels to no-effect levels.

One of EPA's Office of Research and Development's major research goals is to reduce reliance on such assumptions. For example, EPA needs biologically and physiologically-based predictive models that will provide new concepts, data, and methods that can replace default assumptions.

Research is needed on the following areas.

- Methods for estimating dose from cumulative human exposure (e.g., via air, water, soil, and food) to significant and persistent environmental contaminants. This research is intended to support evaluation of cumulative exposure and dose apportionment and to demonstrate the application of the methods developed to estimate human health risks.
- Principles governing age-dependent responses to environmental contaminants and to improve capabilities for animal-to-human extrapolation of health risks. Neurotoxicity is a priority response to be evaluated, but other end points will be considered.
- Quantitative toxicokinetic and toxicodynamic interactions among chemicals in environmental mixtures of members of chemical classes that are significant environmental contaminants (e.g., PAHs, halogenated solvents, metals, chlorinated dioxins and furans, PCBs, and pesticides).
- Toxicological interactions such as additivity, synergism, and antagonism in such mixtures. To improve the ability to estimate risks from environmental exposures, a priority is research that is focused on realistic exposures to environmental contaminants.
- Methods for quantifying non-cancer risks, such as reproductive or developmental disorders. Of special interest are methods that are based on validated correlations between biochemical or physiological markers and clinical end-points.
- Inter-individual and intra-individual variability in factors that affect susceptibility to toxicity from environmental contaminants. Further, research is needed to elucidate relationships between such variability and disease outcome.
- Human and animal reproductive processes vulnerable to environmental contamination. This research is needed to identify keystone or sentinel species whose reproduction can be monitored to signal potential risk to other species, including humans.
- Major uncertainties in risk assessment for microbial pathogens in surface and drinking waters. For example, critical gaps in knowledge exist with respect to occurrence and levels of microbial waterborne pathogens, infectious dose, survival in the environment, and susceptibility to treatment processes.
- Other research areas as defined by proposers that contribute to the overall goals of this research topic.

Approximately $3.0 million will be available from fiscal year 1995 funds. A typical project will be supported for a period of up to 3 years at $150,000 per year.

2. Indoor Air Quality in Large Office Buildings

The 1986 Superfund Amendments and Reauthorization Act (SARA) Title IV directs EPA to conduct and support research on indoor air quality. An important aspect of this research is improving the scientific understanding of, and reducing the uncertainties surrounding, the relationships among indoor air quality, human exposures, and large building design and operation.

Of interest are cross-sectional and/or longitudinal studies of large office buildings in relatively large geographical regions across the United States that characterize the relationships among:

- The physical, mechanical and environmental factors that influence indoor air quality;
- Relevant human exposures to aerosols, micro-organisms, volatile organic compounds, and other parameters such as air exchange rate and pesticides;
- The pathways through which these exposures occur;
- Occupant perceptions of indoor air quality and occupant productivity;
- The extent to which human activity patterns, building system operating practices or design, and indoor or outdoor air quality affect these exposures; and
- Other research areas as defined by proposers that contribute to the overall goals of this research topic.

To provide high quality data necessary for intra- and inter-building comparisons, minimum data requirements and analytical protocols must be the same or equivalent to those recommended in the following two documents: ''A Standardized EPA Protocol for Characterizing Indoor Air Quality in Large Office Buildings,'' (6/1/94) and ''The United States Environmental Protection Agency's Large Building Studies Quality Assurance Overview Document,'' (11/1/94). Copies of these two documents can be obtained by contacting Ross Highsmith at (919) 541–3121, or pahl.dale@epamail.epa.gov.

Approximately $1.5 million will be available from fiscal year 1995 funds. A typical project will be supported for a period of up to 3 years at $150,000 per year.

3. Air Pollutants (Particulate Matter, Tropospheric Ozone, and Toxics)

Certain widespread (criteria) air pollutants, such as ozone and particulate matter (PM), continue to pose serious public health risks for susceptible members of the U.S. population or risks to sensitive ecosystems. The Clean Air Act requires that EPA establish and periodically review and revise, as appropriate, criteria and National Ambient Air Quality Standards (NAAQS) for such pollutants. The Act also requires State Implementation Plans (SIPs) to be prepared, which describe control strategies that States and local authorities will employ to bring non-attainment areas into compliance with the NAAQS.

The EPA is seeking investigator-initiated grant proposals aimed at generating new knowledge to:

(1) Improve the scientific basis for future reassessment of the PM NAAQS;

(2) Reduce uncertainties in SIP modeling projections for tropospheric ozone and measurement of the effectiveness of SIPs in meeting the ozone NAAQS;

(3) Increase the understanding of transport and deposition of volatile and semi-volatile toxic pollutants, and the ultimate exposure of humans and ecosystems to them; and

(4) Other research areas as defined by proposers that contribute to the overall goals of this research topic.

Of particular interest in relation to the first area are projects that will provide information useful in resolving controversies regarding epidemiologic analyses that suggest associations between increased mortality and morbidity, and particulate matter concentrations markedly below the current particulate matter NAAQS, including:

- Improving quantitative estimates of particulate matter exposure;
- Employment of epidemiologic analyses that more directly estimate potential effects; and
- Evaluation of potential confounding variables (e.g., weather).

Possible approaches may involve, but are not restricted to, alternative biostatistical models, coupling existing or refined epidemiologic analyses to improved exposure data, case-control or cross-sectional studies of mortality, indices of morbidity, and/or biomarkers of effects. The relative roles of fine versus coarse particles and of chemical composition are of particular interest.

Of interest in the second area is fundamental research in the atmospheric chemistry, modeling, emissions, and ambient measurement of tropospheric ozone contributing to strengthened control strategy development and improved assessment of SIP effectiveness, including:

- Kinetic and mechanistic studies of gas-phase reactions involving aromatic volatile organic compounds (VOCs), biogenic VOCs, long-chain alkenes and alkanes that participate in ambient photochemistry, and studies on the link between ozone and heterogeneous or aqueous-phase reactions;
- Studies to explore boundary layer turbulence and mixing, and their interaction with atmospheric chemistry, and studies of quantitative techniques for assessing the errors or uncertainties inherent in concentration estimates from ozone air quality modeling systems;
- Studies of large-scale fluxes of biogenic emissions of VOCs and NO_X for different landscapes;
- Studies that may lead to new techniques for ambient measurement, on short time scales, of chemically-significant trace gases participating in the photochemistry of ozone; and
- Both in-situ and remotely-sensed studies of innovative methods for using ambient concentration and meteorological measurements in assessing the potential ozone response to local changes in precursor emissions/concentrations.

Of interest in the third area are projects that address compounds, including aerosols, semi-volatile pollutants, and/or trace metals that travel through the air pathway, especially those that are persistent, mobile, or bioaccumulative. Also of interest are projects that investigate major uncertainties in:

- Transport and atmospheric phase equilibria;
- Composition versus particle size;
- Deposition to surfaces;
- Food chain uptake from atmospheric deposition; and/or
- Dermal exposure from atmospheric deposition.

Projects are encouraged that result in new or improved databases, algorithms, models, or modules for pre-existing models that can be used by the scientific community in the analysis of transport and fate of air toxics; the quantification of air and air-deposition pathways; and the assessment of risks for air toxics.

Approximately $2.5 million will be available from fiscal year 1995 funds. A typical project will be supported for a period of up to 3 years at $150,000 per year.

4. Regional Hydrologic Vulnerability to Global Climate Change

Vulnerability research is a major responsibility of EPA's Global Climate Change Research Program. Understanding regional vulnerability to climate change is critically dependent on understanding how projected wide-spread climate change affects the hydrologic watershed at scales where water resources and related ecologic, economic, and socio-political impacts are manifested. In order to make informed decisions concerning the risks of global change, the public and policymakers need a better understanding of the hydrologic vulnerabilities of regional systems. This, in turn, requires improved methodologies that identify and quantify physical and economic regional vulnerabilities to competing hydrologic demands, under current climate patterns and under projected climate-change scenarios.

Attempts to quantify these types of vulnerabilities have been hampered by the absence of techniques for performing regional analyses using projected climate change. These regional analyses should include both direct hydrologic response (e.g., soil moisture, streamflow, stream temperature) as well as secondary impacts upon regional ecology and economics. Major sources of uncertainty in conducting regional hydrologic analyses are the sensitivities of regional hydrologic systems to changing climate and future demands for water. Accordingly, as part of EPA's interest in watershed research, this solicitation invites proposals that address climate change aspects of watershed hydrology in the following areas:

- Translation of climatic information into water availability (e.g., soil moisture and streamflow) and other ecologic variables as required by water resource and natural resource modelers.
- Linkage of water availability with water and natural resource response prediction.
- Linkage with economic activities in various sectors (e.g., agriculture and forestry) competing for the water resources, and associated feedbacks.
- Other research areas as defined by proposers that contribute to the overall goals of this research topic.

This solicitation seeks proposals that may include a range of innovative research approaches, from modeling to data analysis and observational and experimental approaches, singly or in combination. Proposals are encouraged without regard to specific location of any proposed hydrologic regional setting but should reflect the goal to reduce uncertainties in watershed hydrology as influenced by concerns about vulnerabilities to climate change.

Approximately $1.0 million will be available from fiscal year 1995 funds. A typical project will be supported for a period of up to 3 years at $150,000 per year.

The Application

Proposed projects must be research designed to advance the state of knowledge in the indicated areas of environmental science and technology. Applications will not be accepted for routine monitoring, state-of-the-art or market surveys, literature reviews, development or commercialization of proven concepts, or for the preparation of materials and documents, including process designs or instruction manuals.

Application forms and instructions are available in the EPA Research Grants Application Kit. Interested investigators should review the materials in this kit before preparing an application for assistance. The kits can be obtained at the following address: U.S. Environmental Protection Agency, Office of Research and Development, Office of Exploratory Research (8703), 401 M Street SW., Washington, DC 20460, (202) 260–7474.

Each application for assistance must consist of the Application for Federal Assistance Forms (Standard Forms—SF 424 and 424A), separate sheets that provide the budget breakdown for each year of the project, the resumes for the principal investigator and co-workers, the abstract of the proposed project, and

a project narrative that includes a quality assurance narrative. All certification forms (e.g., lobbying certification) must be signed and included with the application.

The closing date for application submission is April 17, 1995 at 4:00 p.m. est.

To be considered, the original and eight copies of the fully developed research grant application, prepared in accordance with instructions in the Application for Federal Assistance Forms, must be received by the EPA Office of Exploratory Research no later than the above closing date. Informal, incomplete, or unsigned proposals will not be considered. Completed applications should be sent via regular or express mail to: U.S. Environmental Protection Agency, Office of Research and Development, Office of Exploratory Research (8703), 401 M Street SW., Washington, DC 20460.

Applications sent via express mail should have the following telephone number listed on the express mail label: (202) 260–7445.

Special Instructions

The following special instructions apply to all applicants responding to this Request for Application.

- Applications must be unbound and clipped or stapled. The SF–424 must be the first page of the application. Budget information should immediately follow the SF–424. All certification forms should be placed at the end of the application.
- Applicants must be identified by printing ''OER–95'' in block 10 of the SF–424. This will facilitate proper assignment and review of the application.
- A one-page abstract must be included with the application.
- The ''project narrative'' section of the application must not exceed 25, consecutively-numbered, 8½ × 11 inch pages of standard type (i.e., 12 point), including tables, graphs, and figures. For purposes of this limitation, the ''project narrative'' section of the application consists of the following six items:

1. Description of Project
2. Objectives
3. Results or Benefits Expected
4. Approach
5. General Project Information
6. Quality Assurance

Any attachments, appendices, and other references for the narrative section may be included but must remain within the 25-page limitation. Appendices will not be considered an integral part of the narrative.

Items not included under the 25-page limitation are the SF–424 and other forms, budgets, resumes, and the abstract. Resumes must not exceed two consecutively-numbered pages for each investigator and should focus on education, positions held, and most recent or related publications.

Applications not meeting these requirements will be returned to the applicant without review.

Quality Assurance

Data sets resulting from EPA-funded environmental research often are used directly by regulatory officials when establishing standards or when making other policy decisions. Explicit indicators of data quality are essential for determining whether a particular data set is appropriate for use in a specific context. To that end, EPA regulations require that grant-funded projects address quality assurance.

The application must include a quality assurance narrative statement, not to exceed two pages, which for each item listed below, either presents the required information or provides justification as to why the item does not apply to the proposed research.

- The intended use of the data and the associated acceptance criteria for data quality (i.e., precision, accuracy, representativeness, completeness, and comparability).
- Project requirements for precision, accuracy, representativeness, completeness, and comparability, and how these will be determined.
- Procedures for selection of samples or sampling sites, and collection or preparation of samples.
- Procedures for sample handling, identification, preservation, transportation, and storage.
- Description of measurement methods or test procedures, with a statement of performance characteristics if methods are non-standard.
- Standard quality assurance/quality control procedures (e.g., American Society for Testing Materials, American Public Health Association, etc.) to be followed. Non-standard procedures must be documented.
- Data reduction and reporting procedures, including description of statistical analyses to be used.

Guidelines and Limitations

All recipients are required to provide a minimum of 1% of the total project cost, which may not be taken from Federal sources. Subcontracts for research to be conducted under the grant should not exceed 40% of the total direct cost of the grant for each year in which the subcontract is awarded.

Eligibility

Academic and not-for-profit institutions located in the U.S., and state or local governments are eligible under all existing authorizations. Profit-making firms are eligible only under certain laws, and then under restrictive conditions, including the absence of any profit from the project. Federal agencies and federal employees are not eligible to participate in this program. Potential applicants who are uncertain of their eligibility should contact EPA's Grants Operations Branch at (202) 260–9266.

Review and Selection

All grant applications are initially reviewed by EPA to determine their legal and administrative acceptability and responsiveness to this solicitation. Acceptable applications are then reviewed by an appropriate technical peer review group. This review is designed to evaluate and rank each proposal according to its scientific merit. Each review group is composed primarily of non-EPA scientists, engineers, social scientists, and/or economists who are experts in their respective disciplines. All reviewers are proficient in the technical areas that they are reviewing. The reviewers use the following criteria in their reviews:

- Quality of the research plan (including theoretical and/or experimental design, originality, and creativity);
- Qualifications of the principal investigator and staff, including knowledge of relevant subject areas;
- Potential contribution of the research to advancing scientific knowledge in the environmental area;
- Availability and adequacy of facilities and equipment; and
- Budget justification—justification for equipment will receive special attention.

A summary statement of the scientific review of the panel is provided to each applicant.

Funding decisions are the sole responsibility of EPA. Grants are selected on the basis of technical merit, relevancy to the research priorities outlined, program balance, and budget.

Proprietary Information

By submitting an application in response to this solicitation, the applicant grants EPA permission to share the application with technical reviewers both within and outside of the Agency.

Applications containing proprietary or other types of confidential information will be immediately returned to the applicant without review.

Funding Mechanism

The funding mechanism for all awards issued under this solicitation will consist of a grant agreement between EPA and the recipient.

In accordance with Public Law 95–224, a grant is used to accomplish a public purpose of support or stimulation authorized by Federal statute rather than acquisition for the direct benefit of the Agency. In using a grant instrument rather than a cooperative agreement, EPA anticipates that there will be no substantial involvement during the course of the grant, between the recipient and the Agency.

Minority Institution Assistance

Pre-application assistance is available upon request for potential investigators representing institutions identified by the Secretary, Department of Education, as Historically Black Colleges or Universities (HBCUs), Hispanic Association of Colleges and Universities (HACUs), or Native American or Tribal Colleges. For further information on minority assistance, contact Charles Mitchell by telephone at (202) 260–7473, by faxing a written request to (202) 260–0211, or by mailing it to the above-listed address for EPA's Office of Exploratory Research.

Contacts

Additional general information on the grants program may be obtained by contacting: U.S. Environmental Protection Agency, Office of Exploratory Research (8703), 401 M Street SW., Washington, DC 20460, Phone: (202) 260–7474, Fax: (202) 260–0211.

Applicants with technical questions may contact the appropriate individual identified below.

Contacts for Research Topics of Interest

Human Health Risk Assessment

- Kevin Garrahan (202) 260–2588.

Indoor Air Quality in Large Office Buildings

- Ross V. Highsmith (919) 541–7828.
- Kevin Y. Teichman (202) 260–7669.

Air Pollutants (particulates, ozone, & toxics)

- Ila L. Cote (919) 541–3644 (particulates).
- James S. Vickery (919) 541–2184 (ozone).
- Larry T. Cupitt (919) 541–2454 (toxics).

Regional Hydrologic Vulnerability to Global Climate Change

- Barbara M. Levinson, (202) 260–5983.
- Joel D. Scheraga, (202) 260–4029.

Dated: February 1, 1995.

Approved:

Robert J. Huggett,

Assistant Administrator for Research and Development.

[FR Doc. 95–3292 Filed 2–8–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

F & M National Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than March 6, 1995.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. F & M National Corporation, Winchester, Virginia; to acquire 100 percent of the voting shares of Bank of the Potomac, Inc., Herndon, Virginia.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Community Group, Inc., Chattanooga, Tennessee; to acquire 100 percent of the voting shares of Etowah Bancing Company, Etowah, Tennessee, and thereby acquire Southern United Bank of McMinn County, Etowah, Tennessee.

2. Greater Rome Bancshares, Inc., Rome, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Greater Rome Bank, Rome Georgia, a *de novo* bank.

C. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. AMCORE Financial, Inc., Rockford, Illinois; to acquire 100 percent of the voting shares of NBM Bancorp, Inc., Mendota, Illinois, and thereby indirectly acquire First National Bank of Peru, Peru, Illinois, and National Bank of Mendota, Mendota, Illinois.

D. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Otto Bremer Foundation and Bremer Financial Corporation, both of St. Paul, Minnesota; to merge with Morris State Bancorporation, Morris, Minnesota, and thereby indirectly acquire Morris State Bank, Morris, Minnesota.

E. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. American State Bank ESOP, Broken Bow, Oklahoma; to become a bank holding company by acquiring 37.04 percent of the voting shares of American State Bancshares, Inc., Broken Bow, Oklahoma, and thereby indirectly acquire American State Bank, Broken Bow, Oklahoma.

2. Overland Bancorp, Inc., Belton, Missouri; to become a bank holding company by acquiring 80 percent of the voting shares of Bank of Belton, Belton, Missouri.

F. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Gulf Southwest Nevada Bancorp, Inc., Reno, Nevada; and Gulf Southwest Bancorp, Inc., Houston, Texas to acquire 100 percent of the voting shares of Texas Gulf Coast Bancorp, Inc., Houston, Texas, and thereby indirectly acquire First Bank Mainland, LaMarque, Texas; First Bank Pearland, Pearland, Texas; and Texas City Bank, Texas City, Texas.

Board of Governors of the Federal Reserve System, February 3, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–3236 Filed 2–8–95; 8:45 am]

BILLING CODE 6210–01–F

Charles L. Frickey, et al.; Change in Bank Control Notice

Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than February 23, 1995.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Charles L. Frickey, Trustee, Oberlin, Kansas; to acquire an additional 12.50 percent, for a total of 39.54 percent; as trustee of the Charles L. Frickey, Revocable Trust; trustee of Carl L. Frickey Revocable Trust, R.D. Jones, Trustee of R.D. Jones Trust No. 1, Oberlin, Kansas; to acquire an additional 8.54 percent for a total of 26.99 percent, of the voting shares of Farmers Bancshares of Oberlin, Inc., Oberlin, Kansas, and thereby indirectly acquire Farmers National Bank of Oberlin, Oberlin, Kansas,

Board of Governors of the Federal Reserve System, February 3, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–3237 Filed 2–8–95; 8:45 am]

BILLING CODE 6210–01–F

HNB Corporation, et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.'' Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 23, 1995.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. HNB Corporation, Arkansas City, Kansas; to engage *de novo* through its subsidiary Personal Finance Company, Inc., Arkansas City, Kansas, in making personal, consumer, and home equity loans pursuant to § 225.25(b)(1) of the Board's Regulation Y.

B. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Central Louisiana Capital Corporation, Vidalia, Louisiana; to engage *de novo* through its subsidiary Community Credit Centers, Inc., Lake Providence, Louisiana, in selling finance company credit property insurance including credit-life, accident and health insurance, property insurance, non filing fee insurance and vendor's single interest policy insurance pursuant to §§ 225.25(b)(8)(i) and (B)(8)(ii). The geographic scope of these activities is Concordia Parish, Louisiana, and Adams County, Mississippi.

Board of Governors of the Federal Reserve System, February 3, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–3238 Filed 2–8–95; 8:45 am]

BILLING CODE 6210–01–F

Norwest Corporation, et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.'' Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than February 23, 1995.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Norwest Corporation, Minneapolis, Minnesota; through its subsidiary Norwest Mortgage, Inc., Des Moines,

Iowa, to acquire the mortgage business of First National Bank of Kerrville, Kerrville, Texas, thereby engage in mortgage lending activities pursuant to § 225.25(b)(1) of the Board's Regulation Y.

2. Norwest Corporation, Minneapolis, Minnesota; through its subsidiary Norwest Mortgage, Inc., Des Moines, Iowa, to acquire the mortgage business of Community State Bank of Alexandria, Alexandria, Minnesota, and thereby engage in the mortgage origination business, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

3. Norwest Corporation, Minneapolis, Minnesota; through its subsidiary Norwest Investment Services Inc., Minneapolis, Minnesota, proposes to acquire the brokerage services business of Texas National Bank, Midland, Texas, also an indirect subsidiary of Norwest Corporation, and thereby engage in full-service brokerage business, government securities, and limited underwriting activities, pursuant to §§ 225.25(b)(15) and (b)(16) of the Board's Regulation Y.

4. Norwest Corporation, Minneapolis, Minnesota; through its wholly-owned subsidiary Norwest Mortgage, Inc., Des Moines, Iowa, to acquire the mortgage business of Goldenbank, N.A., Golden, Colorado, and thereby engage in the mortgage business, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, February 3, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–3239 Filed 2–8–95; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Annual Update of the HHS Poverty Guidelines

AGENCY: Department of Health and Human Services.

ACTION: Notice.

SUMMARY: This notice provides an update of the HHS poverty guidelines to account for last (calendar) year's increase in prices as measured by the Consumer Price Index.

EFFECTIVE DATE: These guidelines go into effect on the day they are published (unless an office administering a program using the guidelines specifies a different effective date for that particular program).

ADDRESS: Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services (HHS), Washington, D.C. 20201.

FOR FURTHER INFORMATION CONTACT: For information about how the poverty guidelines are used in a particular program, contact the Federal (or other) office which is responsible for that program.

For general information about the poverty guidelines (but not for information about how they are used in a particular program), contact Gordon Fisher, Office of the Assistant Secretary for Planning and Evaluation, HHS—telephone: (202) 690–6141.

For information about the Hill-Burton Uncompensated Services Program (no-fee or reduced-fee health care services at certain hospitals and other health care facilities for certain persons unable to pay for such care), contact the Office of the Director, Division of Facilities Compliance and Recovery, HHS—telephone: (301) 443–5656. The Division of Facilities Compliance and Recovery notes that as set by 42 CFR 124.505(b), the effective date of this update of the poverty guidelines for facilities obligated under the Hill-Burton Uncompensated Services Program is sixty days from the date of this publication.

Under an amendment to the Older Americans Act, the figures in this notice are the figures that state and area agencies on aging should use to determine ''greatest economic need'' for Administration on Aging programs. For information about those programs, contact Donald Fowles, Administration on Aging, HHS—telephone: (202) 619–2614.

For information about the Department of Labor's Lower Living Standard Income Level (an alternative eligibility criterion with the poverty guidelines for certain Job Training Partnership Act programs), contact Josephine Nieves, Associate Assistant Secretary for Employment and Training, U.S. Department of Labor—telephone: (202) 219–6236.

For information about the number of persons in poverty or about the Census Bureau (statistical) poverty thresholds, contact Kathleen Short, Chief, Poverty and Wealth Statistics Branch, U.S. Bureau of the Census—telephone: (301) 763–8578.

1995 POVERTY GUIDELINES FOR ALL STATES (EXCEPT ALASKA AND HAWAII) AND THE DISTRICT OF COLUMBIA

Size of family unit	Poverty guideline
1	$7,470
2	10,030
3	12,590
4	15,150
5	17,710
6	20,270
7	22,830
8	25,390

For family units with more than 8 members, add $2,560 for each additional member. (The same increment applies to smaller family sizes also, as can be seen in the figures above.)

1995 POVERTY GUIDELINES FOR ALASKA

Size of family unit	Poverty guideline
1	$9,340
2	12,540
3	15,740
4	18,940
5	22,140
6	25,340
7	28,540
8	31,740

For family units with more than 8 members, add $3,200 for each additional member. (The same increment applies to smaller family sizes also, as can be seen in the figures above.)

1995 POVERTY GUIDELINES FOR HAWAII

Size of family unit	Poverty guideline
1	$8,610
2	11,550
3	14,490
4	17,430
5	20,370
6	23,310
7	26,250
8	29,190

For family units with more than 8 members, add $2,940 for each additional member. (The same increment applies to smaller family sizes also, as can be seen in the figures above.)

The preceding figures are the 1995 update of the poverty guidelines required by sections 652 and 673(2) of

the Omnibus Budget Reconciliation Act (OBRA) of 1981 (Pub. L. 97–35). As required by law, this update reflects last year's change in the Consumer Price Index (CPI–U); it was done using the same procedure used in previous years.

Section 673(2) of OBRA–1981 (42 U.S.C. 9902(2)) requires the use of the poverty guidelines as an eligibility criterion for the Community Services Block Grant program, while section 652 (42 U.S.C. 9847) requires the use of the poverty guidelines as an eligibility criterion for the Head Start program. The poverty guidelines are also used as an eligibility criterion by a number of other Federal programs (both HHS and non-HHS). When such programs give an OBRA–1981 citation for the poverty guidelines, they cite section 673(2). Due to confusing legislative language dating back to 1972, the poverty guidelines have sometimes been mistakenly referred to as the ''OMB'' (Office of Management and Budget) poverty guidelines or poverty line. In fact, OMB has never issued the guidelines; the guidelines are issued each year by the Department of Health and Human Services (formerly by the Office of Economic Opportunity/Community Services Administration). The poverty guidelines may be formally referenced as ''the poverty guidelines updated annually in the **Federal Register** by the U.S. Department of Health and Human Services under authority of section 673(2) of the Omnibus Budget Reconciliation Act of 1981.''

The poverty guidelines are a simplified version of the Federal Government's statistical poverty thresholds used by the Bureau of the Census to prepare its statistical estimates of the number of persons and families in poverty. The poverty guidelines issued by the Department of Health and Human Services are used for administrative purposes—for instance, for determining whether a person or family is financially eligible for assistance or services under a particular Federal program. The poverty thresholds are used primarily for statistical purposes. Since the poverty guidelines in this notice—the 1995 guidelines—reflect price changes through calendar year 1994, they are approximately equal to the poverty thresholds for calendar year 1994 which the Census Bureau will issue in late summer or autumn 1995.

In certain cases, as noted in the relevant authorizing legislation or program regulations, a program uses the poverty guidelines as only one of several eligibility criteria, or uses a percentage multiple of the guidelines (for example, 130 percent or 185 percent of the guidelines). Some other programs, while not using the guidelines to exclude non-lower-income persons as ineligible, use them for the purpose of giving priority to lower-income persons or families in the provision of assistance or services.

In some cases, these poverty guidelines may not become effective for a particular program until a regulation or notice specifically applying to the program in question has been issued.

The poverty guidelines given above should be used for both farm and nonfarm families. Similarly, these guidelines should be used for both aged and non-aged units. The poverty guidelines have never had an aged/non-aged distinction; only the Census Bureau (statistical) poverty thresholds have separate figures for aged and non-aged one-person and two-person units.

Definitions

There is no universal administrative definition of ''income,'' ''family,'' ''family unit,'' or ''household'' that is valid for all programs that use the poverty guidelines. Federal programs may use administrative definitions that differ somewhat from the statistical definitions given below; the Federal office which administers a program has the responsibility for making decisions about administrative definitions. Similarly, non-Federal organizations which use the poverty guidelines in non-Federally-funded activities may use administrative definitions that differ from the statistical definitions given below. In either case, to find out the precise definitions used by a particular program, one must consult the office or organization administering the program in question. The following statistical definitions (derived for the most part from language used in U.S. Bureau of the Census, Current Population Reports, Series P60–185 and earlier reports in the same series) are made available for illustrative purposes only.

(a) *Family.* A family is a group of two or more persons related by birth, marriage, or adoption who live together; all such related persons are considered as members of one family. For instance, if an older married couple, their daughter and her husband and two children, and the older couple's nephew all lived in the same house or apartment, they would all be considered members of a single family.

(b) *Unrelated individual.* An unrelated individual is a person 15 years old or over (other than an inmate of an institution) who is not living with any relatives. An unrelated individual may be the only person living in a house or apartment, or may be living in a house or apartment (or in group quarters such as a rooming house) in which one or more persons also live who are not related to the individual in question by birth, marriage, or adoption. Examples of unrelated individuals residing with others include a lodger, a foster child, a ward, or an employee.

(c) *Household.* As defined by the Bureau of the Census for statistical purposes, a household consists of all the persons who occupy a housing unit (house or apartment), whether they are related to each other or not. If a family and an unrelated individual, or two unrelated individuals, are living in the same housing unit, they would constitute two family units (see next item), but only one household. Some programs, such as the food stamp program and the Low-Income Home Energy Assistance Program, employ administrative variations of the ''household'' concept in determining income eligibility. A number of other programs use administrative variations of the ''family'' concept in determining income eligibility. Depending on the precise program definition used, programs using a ''family'' concept would generally apply the poverty guidelines separately to each family and/or unrelated individual within a household if the household includes more than one family and/or unrelated individual.

(d) *Family unit.* ''Family unit'' is not an official U.S. Bureau of the Census term, although it has been used in the poverty guidelines **Federal Register** notice since 1978. As used here, either an unrelated individual or a family (as defined above) constitutes a family unit. In other words, a family unit of size one is an unrelated individual, while a family unit of two/three/etc. is the same as a family of two/three/etc.

(e) *Income.* Programs which use the poverty guidelines in determining eligibility may use administrative definitions of ''income'' (or ''countable income'') which differ from the statistical definition given below. Note that for administrative purposes, in many cases, income data for a part of a year may be annualized in order to determine eligibility—for instance, by multiplying by four the amount of income received during the most recent three months.

For statistical purposes—to determine official income and poverty statistics—the Bureau of the Census defines income to include total annual cash receipts before taxes from all sources, with the exceptions noted below. Income includes money wages and salaries before any deductions; net receipts from nonfarm self-employment

(receipts from a person's own unincorporated business, professional enterprise, or partnership, after deductions for business expenses); net receipts from farm self employment (receipts from a farm which one operates as an owner, renter, or sharecropper, after deductions for farm operating expenses); regular payments from social security, railroad retirement, unemployment compensation, strike benefits from union funds, workers' compensation, veterans' payments, public assistance (including Aid to Families with Dependent Children, Supplemental Security Income, Emergency Assistance money payments, and non-Federally-funded General Assistance or General Relief money payments), and training stipends; alimony, child support, and military family allotments or other regular support from an absent family member or someone not living in the household; private pensions, government employee pensions (including military retirement pay), and regular insurance or annuity payments; college or university scholarships, grants, fellowships, and assistantships; and dividends, interest, net rental income, net royalties, periodic receipts from estates or trusts, and net gambling or lottery winnings.

For official statistical purposes, income does not include the following types of money received: capital gains; any assets drawn down as withdrawals from a bank, the sale of property, a house, or a car; or tax refunds, gifts, loans, lump-sum inheritances, one-time insurance payments, or compensation for injury. Also excluded are noncash benefits, such as the employer-paid or union-paid portion of health insurance or other employee fringe benefits, food or housing received in lieu of wages, the value of food and fuel produced and consumed on farms, the imputed value of rent from owner-occupied nonfarm or farm housing, and such Federal noncash benefit programs as Medicare, Medicaid, food stamps, school lunches, and housing assistance.

Dated: February 6, 1995.

Donna E. Shalala,

Secretary of Health and Human Services.

[FR Doc. 95–3285 Filed 2–6–95; 8:45 am]

BILLING CODE 4150–04–P

Food and Drug Administration

[Docket No. 91F–0324]

Goodyear Tire & Rubber Co.; Filing of Food Additive Petition; Amendment; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of January 26, 1995 (60 FR 5184). The document amended the filing notice for a food additive petition filed by the Goodyear Tire & Rubber Co. to indicate that the petitioned additive, alkylthiophenolics, acid-catalyzed condensation reaction products of *p*-nonylphenol, formaldehyde, and 1-dodecanethiol, is also intended for use in pressure-sensitive adhesives. The document was published with some editorial errors. This document corrects those errors.

FOR FURTHER INFORMATION CONTACT: Andrew Zajac, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3095.

In FR Doc. 95–2007, appearing on page 5184 in the **Federal Register** of Thursday, January 26, 1995, the following corrections are made:

On page 5184, in the second column, in the first full paragraph, in line 6, and in the third column, in line 13, the word ''alkylthiophendics'' is corrected to read ''alkylthiophenolics''.

Dated: February 3, 1995.

Alan M. Rulis,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 95–3300 Filed 2–8–95; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB) for Clearance

AGENCY: Health Care Financing Administration, HHS.

The Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to OMB the following proposals for the collection of information in compliance with the Paperwork Reduction Act (Public Law 96–511).

1. *Type of Information Collection:* Reinstatement; *Type of Review Requested:* Regular submission; *Title of Information Collection:* Provider Reimbursement Manual Sections 2721, 2722, and 2725; *Form No.:* HCFA–9044; *Use:* The requirements in the Manual describe justification for submitting an exception request to ESRD composite rates for outpatient dialysis services; *Respondents:* Business or other for profit, Federal agencies or employees/ Non-profit institutions and Small businesses or organizations; *Obligation to Respond:* Required to obtain or retain benefit; *Number of Respondents:* 400; *Total Annual Responses:* 400; *Total Annual Hours Requested:* 19,200.

2. *Type of Information Collection:* Reinstatement, with change, of a previously approved collection; *Type of Review Requested:* Regular submission; *Title of Information Collection:* Medicare Home Health Agency Conditions of Participation; *Form No.:* HCFA–R–39; *Use:* Home Health Agencies to participate in Medicare are required to maintain this information to show compliance with published health and safety; *Respondents:* State or local governments and Business or other for-profit; *Obligation to Respond:* Required to obtain or retain benefit; *Number of Respondents:* 8,039; *Total Annual Responses:* 8,039; *Total Annual Hours Requested:* 69.498.

Additional Information or Comments: Call the Reports Clearance Office on (410) 966–5536 for copies of the clearance request packages. Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: February 3, 1995.

Kathleen B. Larson,

Director, Management Planning and Analysis Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 95–3286 Filed 2–8–95; 8:45 am]

BILLING CODE 4120–03–M

[HSQ–223–N]

CLIA Program; Approval of the College of American Pathologists

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice announces the approval of the College of American Pathologists (CAP) as an accrediting

organization for clinical laboratories under the Clinical Laboratory Improvement Amendments of 1988 (CLIA) program. We have found that the accreditation process of this organization provides reasonable assurance that the laboratories accredited by it meet the conditions required by Federal law and regulations. Consequently, laboratories that voluntarily become accredited by CAP in lieu of receiving direct Federal oversight and continue to meet CAP requirements would meet the CLIA condition level requirements for laboratories and therefore are not subject to routine inspection by State survey agencies to determine their compliance with Federal requirements. They are, however, subject to validation and complaint investigation surveys.

EFFECTIVE DATE: This notice is effective for the period February 9, 1995 through December 31, 1998.

FOR FURTHER INFORMATION CONTACT: Val Coppola (410) 597–5906.

SUPPLEMENTARY INFORMATION:

I. Background and Legislative Authority

On October 31, 1988, the Congress enacted the Clinical Laboratory Improvement Amendments of 1988 (CLIA), Public Law 100–578. CLIA replaced in its entirety section 353 of the Public Health Service Act (PHSA), as enacted by the Clinical Laboratories Improvement Act of 1967, and made every laboratory in the United States and its territories that tests human specimens for health reasons subject to the requirements established by HHS and Federal regulation whether or not it participates in the Medicare or Medicaid program and whether or not it tests specimens in interstate commerce. New section 353 requires HHS to establish certification requirements for any laboratory that performs tests on human specimens and certify through issuance of a certificate that those laboratories meet the certificate requirements established by HHS.

Section 6141 of the Omnibus Budget Reconciliation Act of 1989, Public Law 101–239, amended the Social Security Act (the Act) to require that laboratories participating in the Medicare program meet the certificate requirements of section 353 of the PHSA. Subject to specified exceptions, laboratories must have a current unrevoked and unsuspended certificate to be eligible for reimbursement in the Medicare or Medicaid programs or both. Laboratories that are accredited by a private non-profit organization approved under section 353 of the PHSA will automatically be eligible for Medicare and Medicaid participation as long as they meet applicable State requirements.

On February 28, 1992, we published several final rules in the **Federal Register** (57 FR 7002–7243) that implemented the amendments to section 353 of the PHSA. The technical and scientific portions of these rules were crafted by The Centers for Disease Control and Prevention (CDC) of the Public Health Service (PHS). Specifically, regulations were established at 42 CFR part 493 that:

- Require laboratories to pay fees for issuance of registration certificates, certificates of waiver, certificates of accreditation, or other applicable certificates (in a subsequent rule published January 19, 1993, 58 FR 5215, we added ''certificate for physician-performed microscopy procedures'') and to fund activities to determine compliance with our performance requirements;
- Specify the performance requirements that apply to laboratories subject to CLIA (some of which were amended by the January 19, 1993 rule) and list requirements for laboratories performing certain limited testing to be eligible for a certificate of waiver; and
- Set forth the rules for the enforcement of CLIA requirements on laboratories that are found not to meet Federal requirements.

On July 31, 1992, HCFA issued additional final rules (57 FR 33992), under authority found in section 353(e)(2) of the PHSA, that establish that we may approve a private, nonprofit organization as an accreditation organization for clinical laboratories under the CLIA program if that organization's requirements for its accredited laboratories are equal to or more stringent than the applicable CLIA program requirements of part 493 of our regulations. Therefore, a laboratory accredited by an approved organization that meets and continues to meet all of the accreditation organization's requirements would meet CLIA condition level requirements if it were inspected against CLIA regulations. The regulations listed in subpart E of part 493 specify the requirements an accreditation organization must meet in order to be approved. We may approve an accreditation organization under § 493.501(d) of our regulations for a period not to exceed six years.

In general, the accreditation organization must:

- Use inspectors qualified to evaluate laboratory performance and agree to inspect laboratories with the frequency determined by HCFA;
- Apply standards and criteria that are equal to or more stringent than those condition level requirements established by HHS when taken as a whole;
- Provide reasonable assurance that these standards and criteria are continually met by its accredited laboratories;
- Provide HCFA, within 30 days, with the name of any laboratory that has had its accreditation denied, suspended, withdrawn, limited, or revoked;
- Notify HCFA at least 30 days prior to changing its standards; and
- If HCFA withdraws its approval, notify its accredited laboratories of the withdrawal within 10 days of the withdrawal. A laboratory can be accredited if it meets the standards of an approved accreditation body and authorizes the accreditation body to submit to HCFA records and other information HCFA may require.

Along with requiring the promulgation of criteria for approving an accreditation body and for withdrawing such approval, CLIA regulations require HCFA to perform an annual evaluation by inspecting a sufficient number of laboratories accredited by an approved accreditation organization as well as by any other means that HCFA determines appropriate. Under section 353(o) of the PHSA, the Secretary may, by agreement, use the services or facilities of any other Federal, State or local public agency, or any private, nonprofit organization to conduct inspections of laboratories performing clinical testing on human specimens in the United States and its territories for the purpose of determining compliance with CLIA requirements.

II. Notice of Approval of CAP as an Accrediting Organization

In this notice, we approve CAP as an organization that may accredit laboratories for purposes of establishing their compliance with CLIA requirements. HCFA has examined the CAP application, in which it requested deemed status for all specialties and subspecialties, and all subsequent submissions against the requirements under subpart E of part 493 that an accreditation organization must meet in order to be granted approved status under CLIA. We have determined that CAP has complied with the applicable CLIA requirements as of February 9, 1995 and grant CAP approval as an accreditation organization under this Subpart through December 31, 1998 for all specialty/subspecialty areas.

As a result of this determination, any laboratory that is accredited by CAP

during this time period meets the CLIA requirements for laboratories found in part 493 of our regulations and, therefore, is not subject to routine inspection by a State survey agency to determine its compliance with CLIA requirements. The accredited laboratory, however, is subject to validation and complaint investigation surveys performed by HCFA, or by any other Federal or State or local public agency or nonprofit private organization which acts in comformance to an agreement with the Secretary.

III. Evaluation of CAP

The following describes the process used to determine that CAP, as a private, nonprofit organization, provides reasonable assurance that those laboratories it accredits will meet the applicable requirements of the Federal law and regulations.

A. Requirements for Approving an Accreditation Organization Under CLIA

To determine whether HCFA should grant approval to CAP as a private, nonprofit organization for accrediting laboratories under CLIA, HCFA and CDC conducted a detailed and in-depth comparison of CAP's requirements for its laboratories to those of CLIA and evaluated whether CAP's standards are at least as stringent as the requirements of 42 CFR part 493 when taken as a whole. In summary, we evaluated whether CAP:

- Provides reasonable assurance to us that it requires the laboratories it accredits to meet requirements that are equal to or more stringent than the CLIA condition level requirements and would, therefore, meet the condition level requirements of CLIA if those laboratories had not been granted deemed status and had been inspected against condition level requirements; and
- Meets the requirements of § 493.506, which specify the Federal review and approval requirements of private, nonprofit accreditation organizations.

As specified in the regulations at § 493.506, our review of a private, nonprofit accreditation organization seeking deemed status under CLIA includes, but is not limited to, an evaluation of:

- Whether the organization's requirements for its accredited laboratories are equal to or more stringent than the condition level requirements of the CLIA regulations;
- The organization's inspection process to determine:

—The composition of the inspection teams, qualifications of the inspectors, and the ability of the organization to provide continuing education and training to all of its inspectors;
—The comparability of the organization's full inspection and complaint inspection processes to those of HCFA, including but not limited to inspection frequency, and the ability to investigate and respond to complaints against its accredited laboratories;
—The organization's procedures for monitoring laboratories that it has found to be out of compliance with its requirements;
—The ability of the organization to provide HCFA with electronic data and reports that are necessary for effective validation and assessment of the organization's inspection process;
—The ability of the organization to provide HCFA with electronic data, related to the adverse actions resulting from unsuccessful proficiency testing (PT) participation in HCFA approved PT programs, as well as data related to the PT failures, within 30 days of the initiation of the action;
—The ability of the organization to provide HCFA with electronic data for all its accredited laboratories and the areas of specialty and subspecialty of testing;
—The adequacy of numbers of staff and other resources; and
—The organization's ability to provide adequate funding for performing the required inspections.

- The organization's agreement with HCFA that requires it to:

—Notify HCFA of any laboratory that has had its accreditation denied, limited, suspended, withdrawn, or revoked by the accreditation organization, or that has had any other adverse action taken against it by the accreditation organization within 30 days of the action taken;
—Notify HCFA within 10 days of a deficiency identified in an accredited laboratory where the deficiency poses an immediate jeopardy to the laboratory's patients or a hazard to the general public;
—Notify HCFA of all newly accredited laboratories, or laboratories whose areas of specialty or subspecialty are revised, within 30 days;
—Notify each laboratory accredited by the organization within 10 days of HCFA's withdrawal of recognition of the organization's approval as an accrediting organization under CLIA;
—Provide HCFA with inspection schedules, as requested, for the purpose of conducting onsite validation inspections;
—Provide HCFA, the State survey agency or other HCFA agent with any facility-specific data that includes, but is not limited to, PT results that constitute unsuccessful participation in HCFA approved PT programs and notification of the adverse actions or corrective actions imposed by the accreditation organization as a result of unsuccessful PT participation;
—Provide HCFA with written notification at least 30 days in advance of the effective date of any proposed changes in its requirements; and
—Make available, on a reasonable basis, any laboratory's PT results upon the request by any person, with such explanatory information needed to assist in the interpretation of the results.

Laboratories that are accredited by a HCFA approved accreditation organization must:

- Authorize the organization to release to HCFA all records and information required by HCFA as required at § 493.501;
- Permit inspections as required by the CLIA regulations at 42 CFR part 493, subpart Q;
- Obtain a certificate of accreditation as required by § 493.632; and
- Pay the applicable fees as required by §§ 493.638 and 493.645.

B. Evaluation of the CAP Request for Approval as an Accreditation Organization Under CLIA

CAP has formally applied to HCFA for approval as an accreditation organization under CLIA for all specialties and subspecialties. We have evaluated the CAP application to determine equivalency with our implementing and enforcement regulations, and the deeming/exemption requirements of the CLIA rules. We also verified the organization's assurance that it requires the laboratories it accredits to be, and that the organization is, in compliance with the following subparts of 42 CFR part 493 as explained below:

Subpart E—Accreditation by a Private, Nonprofit Accreditation Organization or Exemption Under an Approved State Laboratory Program

CAP has submitted a list of all specialties and subspecialties that it would accredit, a comparison of individual accreditation and condition level requirements, a description of its inspection process, PT monitoring process, and its data management and analysis system, a listing of the size, composition, education and experience of its inspection teams, its investigative

and complaint response procedures, its notification agreements with HCFA, its removal or withdrawal of laboratory accreditation procedures, its current list of accredited laboratories, and its announced or unannounced inspection process. We have determined that CAP has complied with the general requirements under § 493.501, the applicable parts of § 493.506, and the CLIA requirements for approval as an accreditation organization under various subparts of part 493.

Our evaluation identified areas of the CAP requirements that are more stringent than the CLIA requirements and apply to the laboratory as a whole. Rather than include them in the appropriate subparts multiple times, we list them here:

- CAP requires its accredited laboratories to possess documentation of all State laws and to follow them.
- CAP lists extensive requirements for the Laboratory Information System (LIS), which cover but are not limited to:

+ The preservation, storage, and retrieval of laboratory and patient data;
+ The review of LIS programs for appropriate content and testing before use when a new program is to be put in place or when changes are made to existing programming;
+ The maintenance of the LIS facility, which must be clean, well ventilated, and at proper temperature and humidity;
+ The protection of LIS against power interruptions and surges;
+ The protection of the LIS, its data, patient information, and programs from unauthorized use;
+ The entry of data and result reporting;
+ The verification and maintenance of LIS hardware and software;
+ The routine and emergency service and maintenance of the LIS; and
+ An evaluation from the laboratory director of the LIS performance as it pertains to patient and clinician needs.
+ In addition, the LIS operators must have procedure manuals readily available, be adequately trained in LIS operation, and know what must be done to preserve data and equipment in emergency situations such as software or hardware failure or in the event of fire;

- CAP accredits laboratories that perform testing for any of the following areas and sets specific standards with which their accredited laboratories must comply:

+ Athletic drug testing (for anabolic steroids, beta-blockers, cannabinoids, narcotics, and stimulants);
+ Forensic urine drug testing;
+ Parentage testing; and
+ Reproductive laboratory testing (embryology and andrology).

Subpart H—Participation in Proficiency Testing for Laboratories Performing Tests of Moderate or High Complexity, or Both

The CAP requirements for proficiency testing (PT) are in comformance with the CLIA law, which states that standards shall require all laboratories be tested by PT for each examination for which PT is available. The CAP PT requirements are more stringent than the CLIA regulations at subpart I, which list specific tests for which the laboratory must participate in a HCFA approved PT program. CLIA exempts waived testing from PT, whereas CAP requires its accredited laboratories to participate in its HCFA approved PT program for all testing, including procedures waived under CLIA.

We have determined that the actions taken by CAP to correct unsatisfactory (one failure) and unsuccessful (2 in a row or 2 out of 3 failures) PT performance of its laboratories is equivalent to those of CLIA; in the cases of unsatisfactory performance and the CLIA phase-in allowances, CAP is more stringent. CAP has initiated an on-going electronic monitoring process that flags both unsatisfactory and unsuccessful results for all PT performance, both CLIA required analytes and all other testing for which PT is available and is required by CAP. CAP accredited laboratories are allowed 15 days to respond in writing to each unsatisfactory result, indicating how the problem was investigated, the cause of the problem, the specific corrective action that was taken to prevent recurrence, and evidence that the problem was successfully corrected.

CLIA regulations state that the laboratory must undertake appropriate training and employ the technical assistance necessary to correct problems associated with an unsatisfactory score, take remedial action and document it. Unsuccessful PT performance, when identified by CAP, initiates immediate communication with the laboratory director. A written response must be submitted to CAP, explaining why the adverse results occurred, a description of the investigation of the problem and the actions taken to correct the problem. The laboratory must submit this information within ten working days. If, after review by CAP, it is determined that the laboratory's approach is scientifically valid and PT performance is within acceptable limits, no further action is taken. If the laboratory does not respond, fails to address the problem seriously, or cannot bring performance into acceptable limits, the CAP would evaluate the situation and either request that the laboratory cease testing for the analyte or specialty or subspecialty in question, or, if warranted, revoke accreditation.

CLIA regulations allow a phase-in period for unsuccessful PT performance, which, for previously regulated laboratories (which includes most CAP accredited laboratories), impose no sanctions under § 493.803 (Condition: Successful Participation) until the end of 1994. As the phase-in period ends, the sanctions under CLIA and the actions taken by CAP become equivalent.

CAP also offers a voluntary continuing education and external quality assurance program for PAP smear cytology. The Interlaboratory Comparison Program in Cervicovaginal Cytopathology currently enrolls approximately 1,800 CAP accredited laboratories that perform cytology testing. The number of laboratories this program can enroll is dependent upon the availability of the referenced glass slide material (cervicovaginal smears). When CAP has sufficient quantities to accommodate all of its 2,600 accredited laboratories that perform gynecologic (GYN) cytology, it intends to offer this program as a cervicovaginal cytopathology pathology proficiency testing survey in which its accredited laboratories will be required to participate. Currently there is no HCFA approved cytology PT program capable of enrolling all CLIA certified laboratories that perform GYN cytology testing.

Subpart J—Patient Test Management for Moderate or High Complexity Testing, or Both

The CAP has expanded and in some cases revised its requirements to be equivalent to the CLIA requirements at §§ 493.1101 through 493.1111, on an overall basis. We have determined that CAP's requirements for an accredited laboratory to include on report forms the dates and times of specimen collection (when appropriate) and the release of the report are more stringent than the requirements under CLIA as well as their requirement that reports must be legible. The CAP also requires its accreditated laboratories to use referral laboratories that are appropriately CLIA certified.

Subpart K—Quality Control for Tests of Moderate or High Complexity, or Both

The quality control (QC) requirements of CAP have been evaluated against the phased-in, complexity based

requirements of the CLIA regulations. We have determined that after the additions and revisions made by CAP, the QC requirements of CAP are more stringent than the CLIA requirements, when taken as a whole. Some specific requirements of QC that are more stringent are:

- The CAP does not allow a two year phase-in for QC requirements and requirements are effective without delay;
- The CAP imposes QC requirements equally upon all testing performed by their accredited laboratories, including CLIA's waived procedures. All testing is considered high complexity by CLIA definition;
- The CAP laboratory safety requirements are specific and detailed. Environmental safety requirements address electrical voltage, facility ventilation, lighting, temperature, humidity, and emergency power source and require remedial actions to be taken when necessary. CAP also has requirements in place for handling and disposal of biohazardous materials, fire safety and prevention of fire hazards, as well as all OSHA regulations as they pertain to the laboratory;
- The CAP requires procedure manuals to include the principle and clinical significance for each test, and the procedure manuals must also include documentation of initial and annual reviews;
- CAP accredited laboratories that rely on manufacturers' quality control of microbiological media must have a copy of the National Committee for Clinical Laboratory Standards Document M–22–A (Quality Assurance for Commercially Prepared Microbiological Culture Media) and provide documentation that its media supplier carries out the quality assurance guidelines enumerated in Document M–22–A;
- CLIA regulations allow cytology slide preparations made using automated, semi-automated, or other liquid-based slide preparations that cover half or less of a slide to be counted as one half slide for cytology workload purposes. This allows a maximum of 200 such preparations to be examined by an individual in a 24 hour period. The CAP does not recognize these preparations as half slides, but rather as full slides to be included in an individuals's 100 slide, 24 hour maximum allowable workload;
- CAP requires its accredited laboratories to use the appropriate reagent grade water for the testing performed, stating which type of water (from type I through Type III) must be used in specific tests. Source water must also be evaluated for silicone levels;
- CAP accredited laboratories must verify all volumetric glassware and pipettes for accuracy and reproductability prior to use and recheck them periodically. These activities must be documented;
- CAP accredited laboratories that perform maternal serum alpha-fetoprotein and amniotic fluid alpha-fetoprotein have specific requirements that must be met. These include a qualitative specimen evaluation, requesting and reporting information necessary for interpretation of results; i.e., gestational age, maternal birth date, race, maternal weight, insulin-dependent diabetes mellitus, multiple gestations, median ranges calculated and recalculated yearly, results reported in multiples of the mean, etc;
- The CAP lists specific requirements for newer methodologies. Molecular pathology and flow cytometry standards are presented in separate checklists and immunohistochemistry has specific requirements within histology; and
- CAP record retention requirements are the same or longer than those of CLIA.

The CAP has made additions and revisions to its requirements to make them equivalent to the CLIA regulations. Some examples of these changes are:

- All reagents must be used within their indicated expiration date;
- The laboratory must use components of reagent kits only with other kits of the same lot number, unless otherwise specified by the manufacturer;
- Conforming revisions were made to the CAP standards for calibration and calibration;
- Qualitative and quantitative test control procedure requirements were revised to specify the following more clearly:

+ Control specimens must be tested in the same manner as patient specimens;

+ Reagent performance and adequacy must be verified before placing the material in service. The results of the verification checks must be recorded; and

+ Stains are checked for intended reactivity each day of use;

- CAP has imposed a 100 slide maximum number of cytology slides that an individual may evaluate in a 24 hour period;
- Records must be maintained of the number of cytology slides evaluated by each individual;
- The technical supervisor in cytology (pathologist) must establish each individual's slide limit and re-assess this limit every six months;
- Also, in cytology, CAP requires a minimum of ten percent of negative (GYN) cases be re-screened by a qualified individual and the results of these slides not be released until the rescreens are complete; and
- All previous negative cytology smears available within the past five years must be reviewed on a patient having a current positive smear.

Subpart M—Personnel for Moderate and High Complexity Testing

The Standards for Laboratory Accreditation of the CAP states at Standard I, Director and Personnel Requirements, under item D, Personnel, that all laboratory personnel must be in compliance with applicable federal, state, and local laws and regulations. This standard is implemented in the general laboratory requirement that there must be evidence in personnel records that all testing personnel have been evaluated against CLIA regulatory requirements for high complexity testing and that all individuals qualify. CAP has added requirements to all levels of laboratory personnel, most of which refer to the CLIA regulatory requirements. We have determined that the personnel requirements of the CAP are equal to or more stringent than the personnel requirements of CLIA.

Subpart P—Quality Assurance for Moderate or High Complexity Testing or Both

We have determined that CAP's requirements are equal to or more stringent than the CLIA requirements of this subpart. CAP has made revisions to its checklist requirements for quality assurance to equate to the CLIA requirements. CAP also offers an educational program, Q-Probes, to its accredited laboratories, which provides further information on quality assurance to the large, full service laboratories; this program allows peer review and comparisons between facilities.

Subpart Q—Inspections

We have determined that the CAP inspection requirements, taken as a whole, are equivalent to the CLIA inspection requirements. CAP has made some program modifications pertinent to its overall inspection process, specifically involving the training of all inspectors. CAP has initiated a Laboratory Accreditation Programs Inspector Training Seminars program. Two seminars in each of the 13 CAP regions are presented currently, with 60 such seminars to be presented nationally per year beginning in 1995. Training seminar participants include inspection team leaders and team members.

Another program modification addresses the gathering of information needed to investigate complaints. CAP has discontinued its practice of notifying the laboratory director of the specific reason for contact or inspection when a complaint investigation is in process.

The CAP will continue its policy of conducting announced biennial on-site inspections. An unannounced inspection would be performed when a complaint, lodged against a CAP accredited laboratory, indicates that severe and major problems exist within that laboratory that are likely to have serious and immediate effects on patient care.

Some areas of the CAP inspection process are more stringent that those of CLIA:

- CAP requires a mid-cycle self-inspection of all accredited laboratories. All requirements must be responded to in writing and the responses submitted to CAP within a specified timeframe; and
- A written evaluation of the inspection process and the inspectors must be completed after each on-site inspection of an accredited laboratory. The director of the inspected laboratory must submit this evaluation to the CAP within a specified timeframe.

Subpart R—Enforcement Procedures for Laboratories

CAP meets the requirements of subpart R to the extent that it applies to accreditation organizations. CAP policy stipulates the actions it takes when laboratories it accredits do not comply with its requirements and standards for accreditation. CAP will deny accreditation to a laboratory when appropriate and report the denial to HCFA within 30 days. CAP also provides an appeals process for laboratories that have had accreditation denied.

Some specific actions CAP takes in response to non-compliance or violation of its requirements or standards for accreditation include:

- When an accredited laboratory has been identified as having intentionally referred a PT specimen to another laboratory for analysis prior to the PT program end-date for receipt of results, the CAP laboratory will be denied accreditation and be ineligible for CAP accreditation for one year. This action is similar to the HCFA action of denial of certification for 1 year.
- When a CAP accredited laboratory participates unsuccessfully in PT for an analyte, subspecialty, and/or specialty, the laboratory must initiate corrective actions. It must submit to CAP documentation of a detailed investigation of the problem causing the unsuccessful performance with a corrective action plan within ten working days. Specific educational activity or the retention of the services of a consultant may also be imposed. Failure to bring PT performance into acceptable limits or failure to address the PT problem seriously would cause CAP to request the laboratory to cease testing for the procedure(s) in question or, if warranted, revoke the laboratory's accreditation. This action is equal to the actions that HCFA may take under this subsection.
- When CAP becomes aware of a problem that is severe and extensive enough that it could cause a serious risk of harm (immediate jeopardy) situation in an accredited laboratory, an expedited evaluation is immediately undertaken by the Chair and Vice Chair of the Accreditation Committee, the regional Commissioner and the Director of the Laboratory Accreditation Program. If it is determined that an immediate jeopardy situation exists, the laboratory is required to remove the jeopardy situation immediately or accreditation would be revoked. An on-site focused re-inspection may be performed to verify that the immediate jeopardy no longer exists. These actions are similar to HCFA actions for immediate jeopardy.
- The CAP requires its accredited laboratories to correct all deficiencies within 30 days. CLIA deficiencies that are not condition level must be corrected in a timeframe that is acceptable to HCFA, but no longer than 12 months. CLIA deficiencies that are condition level but are not instances of immediate jeopardy must be corrected in an acceptable timeframe; however, HCFA may impose one or more alternate sanctions or a principal sanction to motivate laboratories to correct these deficiencies. The CAP timeframe for correction of deficiencies, when taken as a whole, is more stringent than CLIA.

We have determined that CAP's laboratory enforcement and policies are equivalent to the requirements of this subpart as they apply to accreditation organizations.

IV. Federal Validation Inspections and Continuing Oversight

The Federal validation inspections of CAP accredited laboratories, as specified in § 493.507, may be conducted on a representative sample basis or in response to substantial allegations of noncompliance (called complaint inspections). The outcome of those validation inspections, performed by HCFA, the State survey agency, or a HCFA agent, will be HCFA's principal means for verifying that the laboratories accredited by CAP remain in compliance with CLIA requirements. This Federal monitoring is an on-going process.

V. Removal of Approval as an Accrediting Organization

Our regulations at § 493.511 provide that the approval of an accreditation organization, such as that of CAP, may be removed by HCFA for cause, prior to the end of the effective date of approval. If validation inspection outcomes and the comparability or validation review produce findings as described at § 493.509(a), HCFA will conduct a review of an accreditation organization's program. A review is also conducted when the validation review findings, irrespective of the rate of disparity (as defined in § 493.2), indicate systemic problems in the organization's processes that provide evidence that the organization's requirements, taken as a whole, are no longer equivalent to the CLIA requirements, taken as a whole.

If it is determined that CAP has failed to adopt requirements that are equal to or more stringent than the CLIA requirements, or systemic problems exist in its inspection process, a probationary period, not to exceed one year, may be given to allow CAP to adopt comparable requirements. Based on an evaluation of any of the items stipulated at § 493.511(d), we will determine whether or not CAP retains its approved status as an accreditation organization under CLIA. If we deny approved status, an accreditation organization such as CAP may resubmit its application when it has revised its program to address the rationale for the denial, demonstrated that it can reasonably assure that its accredited laboratories meet CLIA condition level requirements, and resubmits its application for approval as an accreditation organization in its entirety. If, however, an accrediting organization requests reconsideration of an adverse determination in accordance with Subpart D of part 488 of our regulations, it may not submit a new application until a final reconsideration determination is issued.

Should circumstances result in CAP having its approval withdrawn, we will publish a notice in the **Federal Register** explaining the basis for removing its approval.

In accordance with the provisions of Executive Order 12866, this notice was not reviewed by the Office of Management and Budget.

Authority: Section 353 of the Public Health Service Act (42 U.S.C. 263a).

Dated: January 17, 1995.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

[FR Doc. 95–3165 Filed 2–8–95; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Program Exclusions: January 1995

AGENCY: Office of Inspector General, HHS.

ACTION: Notice of program exclusions.

During the month of January 1995, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusion is imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, Maternal and Child Health Services Block Grant and Block Grants to States for Social Services programs. In addition, no program payment is made to any business or facility, e.g., a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all other Federal non-procurement programs.

Subject, city, State	Effective date
Program-Related Convictions	
Alexis, Peter, Dallas, TX	02/16/95
Alfonso, Leonard, Fairhaven, MA	02/13/95
B and L Transport, Inc., Milwaukee, WI	02/13/95
Battle, Robert Wayne, Dillard, GA	02/16/95
Becker, Donna C., Spokane, WA	02/16/95
Bhatt, Harshad, Manhassat, NY	02/13/95
Bronshteyn, Boris, Lido Beach, NY	02/13/95
Brown, Ervin L., Spokane, WA	02/16/95
Brown, Eric P, Spokane, WA	02/16/95
Center Green Rest Home, Inc, Fairhaven, MA	02/13/95
Champion, Mackie, Blytheville, AR	02/16/95
Cole, Carl Edward, Granville, NY	02/16/95
Dunigan, James, Steele, MS	02/16/95
Fesler, Michael, Melbourne, AR	02/16/95
Gardners Grove Nursing Home, Fairhaven, MA	02/13/95
Hadley, Arthur R, Richmond, CA	02/16/95
Hamilton, Richard J, Woburn, MA	02/13/95
Hinton, Joseph L, Raymond, MS	02/16/95
Kelly, Michael, Brooklyn, NY	02/16/95
Melendez, Maria, M, Bronx, NY	02/13/95
Murray, April B, Winthrop, ME	02/13/95
Newman, Donald Mark, Grady, AR	02/16/95
Ortiz, Twila G, Hart, TX	02/08/95
Pelusi, Joseph F, Lynnfield, MA	02/13/95
Pomonis, Nick S, Orange, TX	02/08/95
Ruyle, David, Dania, FL	02/08/95
Schonbrun, David, Woodbridge, NY	02/16/95
Spielman, Michael, Hauppauge, NY	02/13/95
Strogov, Emilia, Scotch Plains, NJ	02/16/95
Thompson, Beverly K, Milwaukee, WI	02/13/95
Weeks, Edward H, Bonney Lake, WA	02/16/95
Yellow Cab of Woburn, Inc, Woburn, MA	02/13/95
Patient Abuse/Neglect Convictions	
Anyakora, Peter, Baltimore, MD	02/13/95
Bartholomew, Daryl, Denver, CO	02/15/95
Brewer, Sherry Denise, Birmingham, AL	02/12/95
Brown, Herman Jr, DeQueen, AR	02/08/95
Cadiz, Pat, Danbury, TX	02/16/95
Dickerson, Yulander, Talladega, AL	02/12/95
Gravdal, Georgene, Annandale, MN	02/13/95
Jasinski, Jeffrey R, West Seneca, NY	02/16/95
Paul, Joyce Jean, Greenbrier, AR	02/08/95
Ross, Darryl, Donaldsonville, LA	02/08/95
Siggers, Artedra, L, Ellisville, MS	02/08/95
Thatcher, James R, Chillcothe, OH	02/15/95
Controlled Substance Convictions	
Ekinci, Fevzi, Brooklyn, NY	02/13/95
Oliva, Phillip B, Boulder, CO	02/15/95
Straw, Michael F, Denver, CO	02/15/95
License Revocation/Suspension	
Altman, James Lloyd, Walterboro, SC	02/12/95
Amini, Mike, Jordan, UT	02/13/95
Baggett, Lynn D, Hugo, OK	02/08/95
Bottles, Kurt D, Yukon, OK	02/08/95
Boyd, Debra K, Belton, TX	02/16/95
Buckner, John W, San Diego, CA	02/12/95
Busby, Theresa P, West Memphis, AR	02/08/95
Cash, Barbara Lynn, Fayetteville, AR	02/08/95
Chastan, Pamela S, Denison, TX	02/08/95
Cranford, Vanessa Lynne, Perryville, AR	02/08/95
Daywood, Michael K, San Antonio, TX	02/08/95
Deming, Robin, Southbury, CT	02/13/95
DeVries, Edward J, Muskegon, MI	02/13/95
Edwards, Jerrie Dean, Little Rock, AR	02/08/95
Egbuchunam, Maureen I, Irving, TX	02/16/95
Evans, Billie Jean, Reyno, AR	02/08/95
Ewing, Jon R, Quitman, AR	02/08/95
Forbes, Janyce L, Saginaw, TX	02/08/95
Grace, Shirlee J, Belton, TX	02/16/95
Griffis, Michael S, Green Forest, AR	02/08/95
Hall, Gayla S, Mount Pleasant, TX	02/08/95
Hanus, Larry J, Waterloo, IA	02/13/95
Henningsgaard, Wayne, Stillwater, MN	02/13/95
Hobbs, William D, Frederick, OK	02/08/95
Jones, Z Joyce, Ft Worth, TX	02/16/95
Klein, Cathy Marie, Columbia, CT	02/13/95
Lanphere, Margaret Eleese, Krum, TX	02/08/95
Loutfi, Yaser Hasan, Panama City, FL	02/12/95
Marang, Boitshoko, Detroit, MI	02/15/95
Miller, Lynn J, Conway, AR	02/08/95
Mills, Judy Y, Lexington, OK	02/08/95
Morris, Sharon Ann, Springdale, AR	02/08/95
Muhammad, Taalib-Din Iqbal, New York, NY	02/16/95
Nyman, David W, Colorado Springs, CO	02/15/95
Oakley, Diane, Redbird, OK	02/08/95
Parker, Linda M, Hartford, CT	02/13/95
Raskiewicz, Edward B, Bridgeport, PA	02/13/95
Reed, Guy D, Tulsa, OK	02/08/95
Robinson, Taylor, Lexington, MA	02/13/95
Samitier-Cardet, Richard, Miami, FL	02/12/95
Sands, Abel J, Oklahoma City, OK	02/08/95
Satterwhite, Linda L, Overton, TX	02/16/95
Sears, Phyllis Lana, Little Rock, AR	02/16/95
Sheehan, Timothy, Grand Rapids, MI	02/15/95
Soss, Burton Jay, Melbourne, FL	02/12/95
Thompson, Lewis E III, Little Rock, AR	02/08/95
Vaughans, Betty Jennell, Moss Point, MS	02/08/95
Welch, Susan E, Toronto, Ontario, CN	02/16/95
Willoughby, Deloris A, Crockett, TX	02/16/95
Young, Henry A, Baltimore, MD	02/13/95
Zatkowski, John R, Fairfield, CT	02/13/95
Federal/State Exclusion/Suspension	
Anthony, Shirelle, New Orleans, LA	02/16/95
Filoreto, Anthony R, West Hazelton, PA	02/13/95
Torres, Pedro Luis, New Rochelle, NY	02/16/95
Owned/Controlled by Convicted/Excluded	
Arora Clinics, Ltd, Grundy, VA	12/05/94
Hinton Pharmacy, Raymond, MS	02/16/95
Medcare City Pharmacy, Clover, SC	02/12/95
Medical Assistance SVC, Grady, AR	02/16/95
Northeast Arkansas Ambulance, Blytheville, AR	02/16/95

Subject, city, State	Effective date
Northeast Arkansas Ambulance, Steele, MS	02/16/95
Default on Heal Loan	
Anthony, Melvin E, New York, NY	02/16/95
Bennett, Bonnie A, Point Lookout, NY	02/16/95
Blackwell, Michael L, Galveston, TX	02/08/95
Bond, Walter D, Sherman Oaks, CA	02/12/95
Bradley, Bruce S, Las Vegas, NV	02/16/95
Cienkus, Regina M, Berwyn, IL	02/15/95
Cortez, Eddie M, San Antonio, TX	02/08/95
Cutts, David P, Temecula, CA	02/16/95
Danczak, Michael E, Pottstown, PA	10/28/94
De Vastey, Gerard, East Orange, NJ	02/13/95
DeRosa, Arthur Jr, Scottsdale, AZ	02/12/95
Dolton, William A, Norman, OK	02/08/95
Dudley, Raynold R, Houston, TX	02/08/95
Eastman, Donald Wayne, Mesquite, TX	02/08/95
Eaves, Donald G, Houston, TX	02/08/95
Ernst, David J, East Brunswick, NJ	02/16/95
Etcheverry, John Charles, Pinole, CA	02/16/95
Farewell, Howard C, Garnerville, NY	02/13/95
Floyd, James P, Shreveport, LA	02/08/95
French, Robert C, St. Louis, MO	02/15/95
Frye, Mark A, Huntsville, TX	02/08/95
Gauthier, George W III, Wheaton, IL	02/15/95
Goodrich, Allyn P, Ely, NV	02/16/95
Goodrow, Andrew J, New Orleans, LA	02/08/95
Hales, Joyce M, Richmond, TX	02/08/95
Holt, Kenneth G, Canyon Lake, CA	02/12/95
Ittner, William F Jr, Seaside Park, NJ	02/13/95
Kahan, Robert M, Mission Viejo, CA	02/16/95
Kennedy, Grace L, Macon, MS	02/08/95
Kern, Arnold E, Livingston Manor, NY	02/13/95
Lall, Len L, Rockwall, TX	02/08/95
Langford-Ramkelawan, Cynthia, Rosepine, LA	02/08/95
Lodwig, Michael J, Walnut Creek, CA	02/12/95
Lorentzen, Peter E, Anchorage, AK	02/12/95
Lunceford, Glenn W, Norco, CA	02/12/95
Marinaro, Ronald, Studio City, CA	02/12/95
McCord, Allan R, Renton, WA	02/12/95
Mitchell, Jerry III, Pascagoula, MS	02/08/95
Molina, Robert, West Covina, CA	02/12/95
Munson, Kevin D, Huntington Woods, MI	02/15/95
Nayles, Lee C, Little Rock, AR	02/08/95
Neitzel, Shelly J, Ann Arbor, MI	02/15/95
Nwobi-Lazarus, Veronica, Santa Monica, CA	02/12/95
Pugatch, Bruce S, Potosi, MO	02/15/95
Rice, Greg W, Roma, Italy	02/12/95
Rogers, Guy A, Bakersfield, CA	02/12/95
Schaeffer, Darrell Ray, Phoenix, AZ	02/12/95
Schrag, Glenn P, Guthrie, OK	02/08/95
Smith, Ellison B, Jackson, MS	02/08/95
Starnes, Willis L, Irving, TX	02/08/95
Stevenson, Teresa M, Los Angeles, CA	02/12/95
Todd, Carolyn A, Pacific Grove, CA	02/12/95
Treadwell, Stephen M, Healdton, OK	02/08/95
Wallace, Owen, Honolulu, HI	02/12/95
Warner, Brent J, Portland, OR	02/12/95
Watkins, Thomas W, Campbellsville, KY	01/06/95
Weber, Richard L, Staten Island, NY	02/16/95
Weiss, Gwenn M, Cupertino, CA	02/12/95
Wolcat, Gregory J, Southfield, MI	02/15/95
Zalez-Simon, Carol M, Encino, CA	02/12/95
Zinke, Alan G, Nixa, MO	02/15/95
Section 1128Aa	
Bard, Robert D, Texarkana, TX	12/14/94
Red River Eye Associates, Texarakana, TX	12/14/94
Peer Review Organization Cases	
Flage, Lavern John, Independence, IA	12/16/94

Dated: February 3, 1995.

James F. Patton,

Director, Health Care Administrative Sanctions, Office of Civil Fraud and Administrative Adjudication.

[FR Doc. 95–3270 Filed 2–8–95; 8:45 am]

BILLING CODE 4150–04–P

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel.

Date: March 2, 1995.

Time: 8 am to 5 pm.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD.

Contact Person: Mary Nekola, Ph.D, Scientific Review Administrator, NIH, NIDCD, EPS Suite 400C, 6120 Executive Boulevard, MSC 7180, Bethesda, MD 20892–7180, 301/496–8683.

Purpose/Agenda: To review and evaluate Small Grant applications.

The meeting will be closed in accordance with the provisions set forth in sec. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Communication Disorders)

Dated: February 3, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–3180 Filed 2–8–95; 8:45 am]

BILLING CODE 4140–01–M

National Eye Institute; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Name of Committee: Vision Research Review Committee.

Date: February 21, 1995.

Time: 8:00 a.m. until adjournment at approximately noon.

Place: Holiday Inn Bethesda, Delaware Room, 8120 Wisconsin Avenue, Bethesda, MD 20814, (301) 652–2000

Contact Person: Lois DeNinno, Committee Management Officer, EPS 350, 6120 Executive Blvd. MSC 7164, Bethesda, MD 20892–7164.

Purpose/Agenda: To review and evaluate grant applications.

The meeting will be closed in accordance with the provisions set forth in sec. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published later than fifteen days prior to the meeting due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Program No. 93.867, Vision Research; National Institutes of Health, HHS)

Dated: February 3, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–3182 Filed 2–8–95; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda:

To review individual grant applications.

Name of SEP: Clinical Sciences.
Date: February 21, 1995.
Time: 2:00 p.m.
Place: Holiday Inn Oldtown, Alexandria, VA.
Contact Person: Dr. Josephine Pelham, Scientific Review Admin., 5333 Westbard Ave., Room 349, Bethesda, MD 20892, (301) 594–7254.

Name of SEP: Biological and Physiological Sciences.
Date: March 9, 1995.
Time: 1:30 p.m.
Place: NIH, Westwood Building, Room 418A, Telephone Conference.
Contact Person: Dr. Anne Clark, Scientific Review Administrator, 5333 Westbard Ave., Room 418A, Bethesda, MD 20892, (301) 594–7115.

Name of SEP: Behavioral and Neurosciences.
Date: March 6, 1995.
Time: 8:30 a.m.
Place: Holiday Inn, Chevy Chase, MD.
Contact Person: Dr. Jane Hu, Scientific Review Administrator, 5333 Westbard Ave., Room 309, Bethesda, MD 20892, (301) 594–7269.

Name of SEP: Behavioral and Neurosciences.
Date: March 10, 1995.
Time: 9:00 a.m.
Place: Holiday Inn, Chevy Chase, MD.
Contact Person: Dr. Jane Hu, Scientific Review Administrator, 5333 Westbard Ave., Room 309, Bethesda, MD 20892, (301) 594–7269.

Purpose/Agenda

To review Small Business Innovation Research Program grant applications.

Name of SEP: Multidisciplinary Sciences.
Date: March 16–17, 1995.
Time: 8:30 a.m.
Place: Holiday Inn, Chevy Chase, MD.
Contact Person, Dr. John Mathis, Scientific Review Administrator, 5333 Westbard Ave., Room 2A10A, Bethesda, MD 20892, (301) 594–7243.

The meetings will be closed in accordance with the provisions set forth in sec. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institute of Health, HHS)

Dated: February 3, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–3181 Filed 2–8–95; 8:45 am]

BILLING CODE 4140–01–M

Social Security Administration

Rescission of Social Security Acquiescence Ruling 87–3(9)

AGENCY: Social Security Administration, HHS.

ACTION: Notice of rescission of Social Security Acquiescence Ruling 87–3(9)-Hart *v.* Bowen, 799 F.2d 567 (9th Cir. 1986).

SUMMARY: In accordance with 20 CFR 416.1485(e) and 422.406(b)(2), the Commissioner of Social Security gives notice of the rescission of Social Security Acquiescence Ruling 87–3(9).

EFFECTIVE DATE: February 9, 1995.

FOR FURTHER INFORMATION CONTACT: Gary Sargent, Litigation Staff, Social Security Administration, 6401 Security Blvd., Baltimore, MD 21235, (410) 965–1695.

SUPPLEMENTARY INFORMATION: A Social Security Acquiescence Ruling explains how we will apply a holding in a decision of a United States Court of Appeals that we determine conflicts with our interpretation of a provision of the Social Security Act or regulations when the Government has decided not to seek further review of the case or is unsuccessful on further review.

As provided by 20 CFR 416.1485(e)(4), a Social Security Acquiescence Ruling may be rescinded as obsolete if we subsequently clarify, modify or revoke the regulation or ruling that was the subject of the circuit court holding for which the Acquiescence Ruling was issued.

On May 6, 1987, we issued Acquiescence Ruling 87–3(9) to reflect the holding in *Hart* v. *Bowen*, 799 F.2d 567 (9th Cir. 1986), that the current market value of an installment sales contract resulting from the sale of an individual's excluded home is part of the value of the replacement home and thus excluded from countable resources for Supplemental Security Income (SSI) purposes, provided the payments generated by the installment sales contract were reinvested in the excluded replacement home within three months of receipt of the payments.

On August 23, 1994, we published our final regulation (59 FR 43283), revising section 416.1212 of Social Security Regulations No. 16 (20 CFR 416.1212), to clarify when the proceeds from the sale of an excluded home, including the value of a promissory note or similar installment sales contract and other proceeds from the sale (the downpayment and monthly installment payments toward the principal), will be excluded from being considered SSI resources. Because this regulation addresses the Hart court's concerns and contains a thorough explanation concerning how we treat proceeds from the sale of an excluded home, we are rescinding Acquiescence Ruling 87–3(9).

(Catalog of Federal Domestic Assistance Programs No. 93.807 Supplemental Security Income.)

Dated: February 1, 1995.

Shirley S. Chater,

Commissioner of Social Security.

[FR Doc. 95–3240 Filed 2–8–95; 8:45 am]

BILLING CODE 4190–29–P

Rescission of Social Security Ruling (SSR) 80–36, Title XVI: Presumptive Disability and Presumptive Blindness Provision

AGENCY: Social Security Administration, HHS.

ACTION: Notice.

SUMMARY: The Commissioner of Social Security gives notice of the rescission of SSR 80–36.

EFFECTIVE DATE: February 9, 1995.

FOR FURTHER INFORMATION CONTACT: Joanne K. Castello, Division of Regulations and Rulings, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–1711.

SUPPLEMENTARY INFORMATION: Social Security Rulings make available to the public precedential decisions relating to the Federal old-age, survivors, disability, supplemental security income, and black lung benefits programs. Social Security Rulings may be based on case decisions made at all administrative levels of adjudication, Federal court decisions, Commissioner's decisions, opinions of the Office of the General Counsel, and other policy interpretations of the law and regulations.

SSR 80–36, issued in 1980, was published in the 1976–1980 Cumulative Edition of the Rulings on page 482. SSR 80–36 established procedures concerning the types of impairments subject to findings of presumptive

disability and presumptive blindess by field office personnel under the supplemental security income (SSI) program. However, a number of regulations promulgated since the issuance of the Ruling and published at 56 FR 65682 (1991) and 58 FR 36059 (1993) have updated the presumptive disability and presumptive blindness provisions discussed in SSR 80–36. These regulations revised and expanded the procedures for making findings of presumptive disability to include additional categories of impairments, e.g., claims based on human immunodeficiency virus infection of listing-level severity. In addition, the time period for the payment of SSI benefits based on a finding of presumptive disability and presumptive blindness was expanded from 3 months, as stated in SSR 80–36, to 6 months by section 5038 of Pub. L. 101–508. Consequently, SSR 80–36, which was issued prior to these regulations and statutory changes, is now obsolete and is rescinded.

(Catalog of Federal Domestic Assistance, Program 93.807, Supplemental Security Income.)

Dated: February 1, 1995.

Shirley S. Chater,

Commissioner of Social Security.

[FR Doc. 95–3242 Filed 2–8–95; 8:45 am]

BILLING CODE 4190–29–P

Rescission of Social Security Ruling (SSR) 89–5p, Title XVI: Treatment of Installment Sales Contract in Home Replacement Situations

AGENCY: Social Security Administration, HHS.

ACTION: Notice.

SUMMARY: The Commissioner of Social Security gives notice of the rescission of SSR 89–5p.

EFFECTIVE DATE: February 9, 1995.

FOR FURTHER INFORMATION CONTACT: Joanne K. Castello, Division of Regulations and Rulings, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–1711.

SUPPLEMENTARY INFORMATION: Social Security Rulings make available to the public precedential decisions relating to the Federal old-age, survivors, disability, supplemental security income, and black lung benefits programs. Social Security Rulings may be based on case decisions made at all administrative levels of adjudication, Federal court decisions, Commissioner's decisions, opinions of the Office of the General Counsel, and other policy interpretations of the law and regulations.

In September 1989, the Social Security Administration (SSA) changed its national practice regarding the treatment of promissory notes or similar installment sales contracts in home replacement situations and published SSR 89–5p (C.E., 1989, p. 71), effective September 6, 1989. The Ruling explained that the value of an installment sales contract that met certain conditions constituted a ''proceed'' from the sale of an excluded home and could be excluded from resources under the supplemental security income program. 20 CFR 416.1212(d). In addition to the value of the installment sales contract itself, any money proceeds of the sale of the home, including a down payment and the portion of any installment amount constituting payment against the principal, could be excluded resources under the conditions specified in the Ruling.

SSA regulations published on August 23, 1994, at 59 FR 43283, codify SSR 89–5p and reflect more completely SSA's policy on the treatment of proceeds from the sale of an excluded home. Consequently, SSR 89–5p is obsolete and is rescinded.

(Catalog of Federal Domestic Assistance, Program 93.807, Supplemental Security Income.)

Dated: February 1, 1995.

Shirley S. Chater,

Commissioner of Social Security.

[FR Doc. 95–3241 Filed 2–8–95; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–060–1990–01; N64–94–008P]

Notice of Intent to Prepare an Environmental Impact Statement for the Phoenix Project Mining Plan of Operation

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent to prepare an Environmental Impact Statement for the Battle Mountain Gold Company Phoenix Project Plan of Operation for mining in Lander County, Nevada and notice of scoping period and public meetings.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969 as amended, and to 43 CFR Part 3809, the Bureau of Land Management (BLM) will be directing the preparation of an Environmental Impact Statement for the proposed development of a new mill facility, expanded heap leaching and tailings impoundment in Lander County, Nevada. The EIS will be prepared by contract and funded by the proponent, Battle Mountain Gold Company. The BLM invites comments and suggestions on the scope of the analysis.

DATES: Scoping meetings will be held on February 27, 1995, from 7–9 p.m. at the Battle Mountain District BLM Office conference room, 50 Bastian Rd., in Battle Mountain, Nevada; and on February 28, 1995, from 7–9 p.m. at the Airport Plaza Hotel, 1981 Terminal Way, in Reno, Nevada. The purposes of these meetings are to identify issues to be addressed in the EIS, and to encourage public participation in the NEPA process. Representatives of the BLM and Battle Mountain Gold Company will be summarizing the Plan of Operations and the anticipated environmental impacts resulting from the project and will be accepting comments from the audience. Additional briefing meetings will be held as appropriate. Written comments on the Plan of Operation and the scope of the EIS will be accepted until April 14, 1995. A Draft EIS is expected to be completed by November of 1995, at which time the document will be made available for public review and comment.

ADDRESSES: Scoping comments may be sent to: BLM, Lynn Pettit, Phoenix Project EIS Project Manager, Battle Mountain District Manager, 50 Bastian Rd., P.O. Box 1420, Battle Mountain, NV 89820.

FOR FURTHER INFORMATION CONTACT:

Lynn Pettit, Project Manager, at (702) 635–4000.

SUPPLEMENTARY INFORMATION: Battle Mountain Gold Mining Company has recently submitted a proposal to develop a mining facility at the south end of the Battle Mountain Range, in Lander County, Nevada, approximately 15 miles southwest of Battle Mountain. The proposed mining development will involve an expansion of the current heap leaching and tailings facilities, and a new mill. One extracted from proposed open pits will be processed for gold recovery by milling and heap leaching processes. Dewatering will be necessary in order to mine several of the proposed open pits. To prevent anticipated pit lake quality problems due to the composition of the host rock in one of the pits, Battle Mountain Gold is proposing a permanent ground water conveyance system that would begin at an entry way within the pit, travel downgradient through an underground drainage system to a portal opening and from there travel via an above ground channel to a location that would serve as an infiltration basin and/or wetland. The majority of the waste rock will be partially, or completely, backfilled into open pits and used to cap existing copper leach run-of -mine dumps. The total land disturbance (private + public) over the life of the mine could reach 1,909 acres. Land previously disturbed by mining related activity would make up 1,278 of these acres.

Potentially significant and significant direct, indirect, cumulative and residual impacts from the proposal will be analyzed in the EIS. Significant issues to be addressed in the EIS include those relating to air quality, surface and ground water resources, geochemistry, reclamation, and social and economic values, and cumulative impacts. Additional significant issues to be addressed may arise during the scoping process. Federal, state, and local agencies and other individuals or organizations who may be interested in or affected by the BLM's decision on this plan of operation are invited to participate in the scoping process.

Dated: January 30, 1995.

Michael C. Mitchel,

Acting District Manager.

[FR Doc. 95–3275 Filed 2–8–95; 8:45 am]

BILLING CODE 4310–HC–M

[ID–056–1610–00]

Notice of Intent to Prepare a Supplement to the Draft Environmental Impact Statement for the Bennett Hills Draft Resource Management Plan and Amendment to the Jarbridge Resource Management Plan, Idaho

AGENCY: Bureau of Land Management; Interior.

ACTION: The Shoshone District Bureau of Land Management announces the intent to prepare a supplement to the Bennett Hills Draft Resource Management Plan/ Draft Environmental Impact Statement, and Amendment to the Jarbridge Resource Management Plan.

SUMMARY: Pursuant to 40 CFR 1502.9(c) implementing the *National Environmental Policy Act of 1969,* the Bureau of Land Management's Idaho State Director has determined the need to prepare a supplement to the Draft Environmental Impact Statement for the Bennett Hills Draft Resource Management Plan issued for public comment on April 1, 1994. This action is taken to allow the agency to fully consider and incorporate comments received on the draft.

DATES: No date has been set for the release of the Supplement. Notification of release will be made in the **Federal Register** and local news media. The Supplement will be circulated for an additional 90-day public comment period.

FOR FURTHER INFORMATION CONTACT: Project Manager William H. West, Shoshone District Bureau of Land Management, P.O. 2–B, Shoshone, Idaho 83352, telephone (208) 886–7203.

SUPPLEMENTARY INFORMATION: On September 20, 1990, the Shoshone District Bureau of Land Management published a Notice of Intent to prepare a Draft Resource Management Plan/Draft Environmental Impact Statement for the Bennett Hills Resource Area. On March 25, 1992, the Boise District of the Bureau of Land Management published a Notice of Intent to prepare an Amendment to the Jarbridge Resource Management Plan to be incorporated in the Draft Environmental Impact Statement for the Bennett Hills Draft Resource Management Plan. On April 1, 1994, a Notice of Availability of the Draft Environmental Impact Statement was published in the **Federal Register** and the public was invited to comment.

The public comment period ended on July 1, 1994, with 170 comment letters received containing over 400 individual comments. The comments identified new actions, standards and guidelines not contained in the Draft. The comments include specific suggestions for livestock management prescriptions in riparian areas, proposals for new Areas of Critical Environmental Concern, and land exchanges to accommodate recent community expansion needs that were not contained or analyzed in the Draft.

The comments also provided clarity and focus to the public's desires and needs not found in the original scoping for the Draft in 1990. At the time of the original scoping, five open houses were held at different locations in the valley; however, less than 30 people attended and, despite concerted efforts to solicit public opinion, only 66 total comments were received during the formal scoping period. The scoping comments were very broad in nature and often dealt with general BLM policy questions not directed toward actions within the jurisdiction of the RMP. Comments received on the Draft were directed toward management actions on the planning area and within the scope of a Resource Management Plan decision. Additionally, because of the long lag time from the scoping to the publication of the Draft, the public's wishes for management of the public land had changed.

Dated: January 31, 1995.

Robert D. Cordell,

Area Manager, Bennett Hills Resource Area.

[FR Doc. 95–3274 Filed 2–8–95; 8:45 am]

BILLING CODE 4310–GG–M

[CO–056–1430–00]

Seasonal Road Closure

AGENCY: Bureau of Land Management, Interior.

SUMMARY: Notice is hereby given in accordance with 43 CFR 8364.1(a) Closure and Restriction. Pursuant to 43 CFR 8364.1 the following Bureau of Land Management (BLM) roads in Conejos, Rio Grande, and Saquache Counties will be temporarily closed to motorized vehicle use to protect roads and fragile resources during the wet conditions of the spring thaw.

Conejos County: Cumbres Toltec Rd. (#5035), Bighorn Rd. (#5041), Las Mestas Rd. (#5048), Poso Loop Rd. (#5046), RaJadero Rd. (#5065), Posito Creek Rd. (#5075), Capulin Peak Rd. (#5060) and Cinder Pits Rd. (#5055).

Rio Grande County: Bronson Peak Rd. (#5100), Spring Gulch Rd. (#5105), and the Nine Mile Road access onto BLM Rd. #5100.

Saquache County: Poncha Loop Rd. (#5325), Clover Creek Rd. (#5330), Dorsey Creek Rd. (#5331), Noland Gulch Loop Rd. (#5305), Clayton Cone Rd.

(#5310), Findley Gulch Rd. (#5290), Poison-Dry Loop Rd. (#5275), Cabin Draw Rd. (#5265), Ward Gulch Rd. (#5260), Antelope Creek Rd. (#5250), Trickle Mountain Rd. (#5255), Big Dry Gulch Rd. (#5242), Taylor Canyon Rd. (#5248), Decker Creek Rd. (#5335) and Squaw Creek Rd. (#5245).

DATES: This closure is in effect from March 1 through May 31 and shall remain in effect unless revised, revoked or amended.

ADDRESSES: Comments can be directed to the Area Manager, San Luis Resource Area, 1921 State Street, Alamosa, CO 81101 or District Manager, Canon City District Office, 3170 E. Main, Canon City, CO 81212.

FOR FURTHER INFORMATION CONTACT: Julie Howard, Area Manager at (719) 589–4975.

SUPPLEMENTARY INFORMATION: Roads will be reopened to travel when dry soil conditions allow. These restrictions do not apply to emergency, law enforcement and Federal, State or other government personnel who are in the area for official or emergency purposes and who are expressly authorized or otherwise officially approved by BLM. Any person who fails to comply with this closure order will be subject to the penalties provided by 43 CFR 8360.0–7 which includes fines not to exceed $1000 and/or imprisonment not to exceed 12 months. Notice of this closure will be posted at the San Luis Resource Area Office and the Canon City District Office.

Donnie R. Sparks,

District Manager.

[FR Doc. 95–3169 Filed 2–8–95; 8:45 am]

BILLING CODE 4310–JB–M

[NM–930–1430–01;KSNM 94549]

Notice of Proposed Modification of Public Land Order (PLO) 5605; Transfer of Jurisdiction in Leavenworth County, Kansas

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice.

SUMMARY: The United States Department of Justice (DOJ) has requested a modification of PLO 5605 to formally change the use and benefitting agency of 24 acres from a part of a Federal correction facility for the DOJ to a Frontier Army Museum under the Department of Army. The land has been and remains closed to surface entry and mining but not from leasing under the mineral leasing laws.

DATES: Comments should be received by May 10, 1995.

FOR FURTHER INFORMATION CONTACT: Clarence Hougland, BLM, New Mexico State Office, P.O. Box 27115, Santa Fe, New Mexico, 87502–0115, 505–438–7593.

SUPPLEMENTARY INFORMATION: The DOJ proposes to modify the withdrawal made by PLO 5605 dated October 13, 1976, which withdrew the following described land from all forms of appropriation under the public land laws, including the mining laws, but not from leasing under the mineral leasing laws:

Sixth Principal Meridian

T. 8 S., R. 23 E.,

A tract of land situated in the N½NE¼ of sec. 26, more particularly described as follows:

Beginning at a concrete monument (#29) located in the NE¼ of sec. 26 on the Fort Leavenworth Military Reservation; thence S. 19°45′13″ E., 657.44 ft. along the reservation boundary, which is contiguous to the easterly boundary of the Federal Penitentiary under the jurisdiction of the DOJ, to a 4-inch bolt in Grant Avenue, said bolt being in the easterly boundary of said Federal Penitentiary, from which said bolt the bearing and distance to a reference iron pin formally in the north boundary line of the City of Leavenworth is S. 19°45′13″ E., 104.28 ft.; thence Westerly, approximately 914 ft. along the north right-of-way line of Metropolitan Avenue to the east line of the Kansas Power and Light (KPL) easement; thence N. 01°14′34″ E., 461.11 ft. along the east line of said KPL easement; thence N. 86°25′25″ E., 48.09 ft. along the east line of said KPL easement; thence N. 05°27′41″ W., 388.76 ft. to a point in the old boundary of the Fort Leavenworth Military Reservation the same being the east line of the said KPL easement; thence N. 71°55′09″ W., 409.20 ft. along said KPL easement and along said old boundary of said reservation to a point; thence Northerly along said KPL easement approximately 1000 ft., parallel to the north line of Metropolitan Avenue, to a point in the present boundary of Fort Leavenworth Military Reservation, said point being in the center of Corral Creek; thence in a Southerly direction upstream, along the center of the ditch, approximately 643 ft. along the present reservation boundary to a point, said point being in the old reservation boundary; thence Southeasterly, approximately 161 ft., along the present reservation boundary to the point of beginning.

The area described contains 24 acres more or less, in Leavenworth County.

On October 13, 1976, 269.60 acres within the Fort Leavenworth Military Reservation were withdrawn and reserved for use of the DOJ for use by the Bureau of Prisons in connection with the operation of the Leavenworth Federal Penitentiary. The DOJ has determined that 24 acres of this withdrawal is no longer needed for the Federal correction facility and has agreed to a transfer of the 24 acres to the Department of Army for the Frontier Army Museum. No change is proposed in the segregative effect of the withdrawal.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed modification of use and transfer of jurisdiction may present their views in writing to the Deputy State Director, Resource Planning, Use, and Protection, BLM, at the above address.

Dated: January 25, 1995.

Gilbert J. Lucero,

State Director.

[FR Doc. 95–3171 Filed 2–8–95; 8:45 am]

BILLING CODE 4310–FB–P

Fish and Wildlife Service

Availability of a Habitat Conservation Plan, Environmental Assessment, and Receipt of an Application for an Incidental Take Permit of Desert Tortoise Related to the Use of the Tuacahn School and Performing Arts Center Access Road, Ivins, Washington County, Utah

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Heritage Arts Foundation (Applicant) has applied to the Fish and Wildlife Service for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act (Act) of 1973. The Applicant has been assigned Permit Number PRT–798634. The requested permit, which is for a period not to exceed 2 years, would authorize the incidental take of the threatened desert tortoise (*Gopherus agassizii*). The proposed take would occur as a result of further improvement and continued use of an access road to the Tuacahn School and Performing Arts Center (Tuacahn Center) in Ivins, Washington County, Utah. The road was constructed by the Applicant but has been deeded to the city of Ivins. It is anticipated that the road will be paved and will serve employees, students, and visitors of the Tuacahn Center.

The Applicant has prepared a habitat conservation plan and an environmental assessment for the incidental take permit application. This notice is provided pursuant to section 10(c) of

the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the habitat conservation plan, permit application, and environmental assessment must be received within 30 days of the date of this publication.

ADDRESSES: Requests for any of the above documents and comments or materials concerning them should be sent to the Assistant Field Supervisor, Fish and Wildlife Service, 145 East 1300 South, Suite 404, Salt Lake City, Utah 84115. The documents and comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Robert D. Williams, Assistant Field Supervisor (See **ADDRESSES** above) (telephone (801) 524–5001, facsimile (801) 524–5021).

SUPPLEMENTARY INFORMATION: Section 9 of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), prohibits the ''taking'' of any threatened or endangered species, including the desert tortoise. However, the Fish and Wildlife Service (Service), under limited circumstances, may issue permits to take threatened and endangered wildlife species if such taking is incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for threatened and endangered species are at 50 CFR 17.22.

The Heritage Arts Foundation, a nonprofit foundation, is currently constructing the Tuacahn School and Performing Arts Center (Tuacahn Center) on an 80-acre parcel in Padre Canyon in the city of Ivins, Washington County, Utah. There is a 2.1 kilometer (1.3 mile) graded access road to the Tuacahn Center that was constructed 2 years ago. The access road and the Tuacahn Center site are known to be inhabited by the desert tortoise, a threatened species.

Development of the Tuacahn Center site and access road has occurred over the last several years without formal section 7 consultation or a section 10(a)(1)(B) incidental take permit under the Act. In a December 24, 1991, letter to the Applicant regarding a desert tortoise ''presence or absence'' survey of the site for the Tuacahn Center, the Service noted that the survey did not find concrete evidence that desert tortoises inhabited the site proposed for development. No live desert tortoises, cover sites (such as dens and burrows), or tracks were found. The Service further stated in the letter that due to the proximity of the desert tortoise in the project area there would always be the chance that one or more individuals could move onto the property that was to be developed or construction activities may impact active tortoise habitat. Additionally, the Service stated that if a tortoise was found on the property at any time, all construction and any other activity that may harm the animal should stop and the Service's Salt Lake City Office be notified immediately. At that time the Service would determine the best course of action. A surveyor was contracted by the Applicant to complete a desert tortoise ''presence or absence'' survey along the then-proposed access road, but the road was constructed before the survey was started and the surveyor decided not to conduct the survey. Therefore, a desert tortoise ''presence or absence'' survey was conducted only on the Tuacahn Center site and not on the access road.

Two desert tortoises were found dead in 1994 on the access road, crushed by construction vehicles. As agreed to in a Stipulated Settlement (Agreement) between the Applicant and the U.S. Department of Justice dated August 17, 1994, the Applicant prepared a habitat conservation plan and applied for an individual section 10(a)(1)(B) incidental take permit from the Service. The habitat conservation plan addresses the further improvement and continued use of the Tuacahn Center access road. The Applicant prepared an environmental assessment as part of the permit application.

The Applicant considered two other alternatives—a no action alternative and an alternate access road location alternative. The Applicant rejected the no action alternative because a habitat conservation plan would not be pursued and no section 10(a)(1)(B) incidental take permit would be issued. This would violate the Agreement signed by the Applicant and the Justice Department. In addition, the road has already been constructed and the Tuacahn Center is 90 percent completed. Vehicle use of the road continues and is expected to increase once the Tuacahn Center opens. Without a section 10(a)(1)(B) permit, a risk of further unauthorized take of desert tortoises is possible. The second alternative that was considered and rejected was to move the access road to further minimize potentially adverse impacts to the desert tortoise. The current location of the access road crosses an area of continuous desert tortoise habitat, yet it is economically feasible to construct underneath crossings in a small area. A possible alternate location would be to move the access road's intersection with Snow Canyon Road to the north at the base of the talus slope up the mouth of Padre Canyon. Taking the access road along the base of the cliffs would impact a much larger area crossed by tortoises and impact other candidate species such as the chuckwalla (*Sauromalus obesus*) and gila monster (*Helorderma suspectum*).

Since 1991, the Washington County Commission has been developing a regional habitat conservation plan and section 10(a)(1)(B) permit application for take of desert tortoise in Washington County for the Upper Virgin River Recovery Unit. When finalized, this proposed regional habitat conservation plan will incorporate the Tuacahn Center project area and access road. The proposed Washington County regional habitat conservation plan is expected to be released by June 1995.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) and the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*).

Dated: February 3, 1995.

Ralph O. Morgenweck,

Regional Director, Denver, Colorado.

[FR Doc. 95–3244 Filed 2–8–95; 8:45 am]

BILLING CODE 4310–55–M

Minerals Management Service

Availability of Outer Continental Shelf Official Protraction Diagrams

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of availability of revised Outer Continental Shelf Official Protraction Diagrams (OPD's).

SUMMARY: Notice is hereby given that effective with this publication, the following revised outer continental shelf (OCS) Official Protraction Diagrams (OPD's) for the Cook Inlet/Shelikof Strait area are on file and available in the Alaska OCS Region office, Anchorage, Alaska. They reflect revisions to previously published OPD's to correct a computational problem occurring along the UTM Zone Boundary. These OPD's should be used for the Offshore Program within the Cook Inlet/Shelikof Strait area.

Description	Date
NO 04–06, Ugashik	January 4, 1995.
NO 05–02, Seldovia	January 4, 1995.

Description	Date
NO 05–04, Afognak	January 4, 1995.
NO 05–05, Karluk	January 4, 1995.

ADDRESSES: Copies of these OPD's may be purchased for $2.00 each from the Minerals Management Service, Alaska OCS Region, 949 East 36th Avenue, Room 603, Anchorage, Alaska 99508–4302, Attention: Library, (907) 271–6435.

FOR FURTHER INFORMATION CONTACT: Technical comments or questions pertaining to these maps should be directed to Leasing and Environment, Chief, Leasing Activities Section, at the address stated above, or at (907) 271–6691.

Dated: January 30, 1995.

Judith C. Gottlieb,

Regional Director, Alaska OCS Region.

[FR Doc. 95–3167 Filed 2–8–95; 8:45 am]

BILLING CODE 4310–MR–M

National Biological Service

State Partnership Program

AGENCY: National Biological Service, Interior.

ACTION: Notice.

SUMMARY: The National Biological Service (NBS) is announcing the availability of funds to States for research, inventory and monitoring, and the dissemination of information relating to biological resources. This program is intended to encourage and reinforce cooperative working relationships between NBS and the States, and among States and their agencies. It is anticipated that the resulting cooperation and collaboration will produce and make available more and better biological information at less cost by leveraging public funds for greater efficiency.

DATES: Materials concerning this program, proposals, and applications for Federal assistance must be received by March 22, 1995. Decisions on the proposals will be made in April 1995.

ADDRESSES: Proposals should be sent to the National Biological Service State Partnership Program; Mail Stop 3070–MIB, 1849 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Ms. Mary Anne Young, Mail Stop 3070–MIB, 1849 C Street NW., Washington, DC 20240, telephone 202–482–3188, or on internet as YoungM@Mail.fws.gov.

SUPPLEMENTARY INFORMATION:

A. Purpose

The NBS is developing a multi-dimensional State Partnership Program intended to build upon relationships between States and the Department of the Interior (DOI) bureau elements that have been transferred to NBS with the goals of (1) fostering collaborative efforts within and between States to increase the availability of sound ecological and biological science to decisionmakers; (2) producing information and products regarding biological and ecological resources useful for decisionmaking to all levels of government and the private sector; (3) promoting more efficient use of both NBS and State funding by fostering collaboration, and (4) promoting overall closer relationships with the States. This program is conducted in furtherance of the Secretary's obligations under the Fish and Wildlife Act of 1956 (16 U.S.C. 742a-j) and the Fish and Wildlife Coordination Act (16 U.S.C. 661–667e). NBS solicits applications for project funding.

B. Background

The NBS was created in November 1993, as an independent science bureau in DOI. The Secretary of the Interior issued Order No. 3185 on January 5, 1995, changing the name of ''the National Biological Survey'' to ''the National Biological Service'' to more accurately reflect the mission of the agency. Sec. 6.b. of Order No. 3185 reads: ''States have significant resource management responsibilities, including species other than those entrusted to the Federal Government. Also, they hold much of the information necessary to understand important resource issues. The NBS will work with States to understand the biological resource issues and share data, working with them to establish common protocols and standards for data collection, analysis, and dissemination.''

The National Academy of Sciences (NAS) 1993 report on the NBS, A Biological Survey for the Nation, stated that effective conservation and protection of the Nation's resources depended on strong partnerships between Federal and State agencies. The NBS concurs strongly and seeks to expand its interactions with States. A key to NBS success is the development of close collaboration between NBS and States, and among various State agencies.

States have diverse capabilities for collecting data useful to a variety of decisionmakers. Each State has legal mandates for conserving and managing its fish and wildlife resources for values including cultural, aesthetic, educational, scientific, economical, and recreational. The NBS inherited constructive working relationships with States through the Cooperative Fish and Wildlife Research Unit programs and a wide variety of programs and projects at the Fish and Wildlife Research Centers now generally referred to as Science Centers—and other field units. NBS therefore is keenly aware of the array of biological information and expertise available from State agencies, and how many of their missions and goals correlate well with NBS programs.

C. Availability of Funds

The NBS is inviting State agencies and institutions whose primary focus is on natural resources to submit applications for funding for Fiscal Year 1995. The total funding available for Fiscal Year 1995 is $600,000. These monies will be provided to successful applicants on a competitive basis. In order to maximize the number of States able to participate, there is no minimum project cost. The maximum project cost will be $150,000. Proposals showing matching funds and in-kind contributions are encouraged as are proposals that are submitted as collaborative projects among State entities or involving two or more States.

D. Eligibility Requirements

Any agency or instrumentality of the several States, The District of Columbia, and all Territories, Possessions and Commonwealths of the United States, that conducts natural resource identification, monitoring, or research, may apply.

E. Application Process

Any parties interested in obtaining more information from the NBS State Partnership program and/or information on how to apply for available funds should write to: The National Biological Service, State Partnership Information Request, Mail Stop 3070–MIB, 1849 C Street NW., Washington, D.C. 20240, Attn: Mr. Robin O'Malley; or Internet: O'MalleyR@Mail.fws.gov

All requestors will receive an information package with detailed application instructions including the proposal format, the criteria for funding, the methods by which proposals will be selected, a description of NBS programs and priorities for FY 1995, a list of NBS contacts for the specific areas, and an Application for Federal Assistance (Standard Form 424).

F. Dates

Proposals and Applications for Federal Assistance must be submitted to the above address by March 22, 1995. Decisions on the proposals will be made in April 1995.

F. Eugene Hester,

Deputy Director, NBS.

[FR Doc. 95–3159 Filed 2–8–95; 8:45 am]

BILLING CODE 4310–DP–P

Success With Species at Risk Initiative

AGENCY: National Biological Service, Interior.

ACTION: Notice of availability.

SUMMARY: The National Biological Service (NBS), Office of Inventory and Monitoring, is establishing a Success With Species at Risk Initiative to develop scientific information on the status and trends of sensitive species and ecosystems, particularly with respect to the relationship of habitats to abundance and distribution, and with special emphasis on producing information needed by or useful to public and private land managers.

The goal of the initiative is to fund projects, on a wide range of taxa, that will generate information and alternatives that lead to the stabilization of declining populations of sensitive species, and special attention will be focused on the U.S. Fish and Wildlife Service Category 2 species list compiled under the authority of the Endangered Species Act. Information will be shared with the U.S. Fish and Wildlife Service for use in listing determinations. Information may also lead to removal of species from the candidate list.

DATES: Completed project proposals and Federal Assistance forms (Standard Form 424, etc.) must be received by the NBS within 45 days after publication of this notice in the **Federal Register**. Notification of project selection and funding will be made as early as April 26, 1995.

ADDRESSES: Parties interested in this initiative should request an information package from: National Biological Service, Mail Stop 3660–MIB, 1849 C Street NW, Washington, D.C. 20240, attn. John Mosesso or Wendy Kuhne.

FOR FURTHER INFORMATION CONTACT: John Mosesso or Wendy Kuhne, Mail Stop 3660–MIB, 1849 C Street NW, Washington, D.C. 20240, E-Mail: MosessoJ@mail.fws.gov or KuhneW@mail.fws.gov, or telephone 202–482–3774.

SUPPLEMENTARY INFORMATION:

A. Purpose

Notice is hereby given that the National Biological Service (NBS), Office of Inventory and Monitoring, is establishing a Success With Species at Risk Initiative to develop scientific information on the status and trends of sensitive species and ecosystems, particularly with respect to the relationship of habitats to abundance and distribution, and with special emphasis on producing information needed by or useful to public and private land managers.

This notice is to provide an opportunity for scientists, conservationists and land managers from academia, State agencies, private organizations and industry, and Native American Tribes and Nations to participate in this initiative through research, inventory and monitoring activities. The initiative involves short-term projects that generate information on sensitive species and particularly those presently listed on the U.S. Fish and Wildlife Service Category 2 species list.

The goal of the initiative is to fund projects, on a wide range of taxa, that will generate information and alternatives that lead to the stabilization of declining populations of sensitive species, and special attention will be focused on the U.S. Fish and Wildlife Service Category 2 species list compiled under the authority of the Endangered Species Act. Information will be shared with the U.S. Fish and Wildlife Service for use in listing determinations. Information may also lead to removal of species from the candidate list.

This initiative is conducted in furtherance of the Secretary's obligations under the Fish and Wildlife Act of 1956 (16 USC 742a–742j, as amended) and the Fish and Wildlife Coordination Act (16 USC 661–667e, as amended).

B. Background

The NBS is an independent science bureau in the Department of the Interior (DOI) that gathers and analyzes biological information and serves as an information clearinghouse, providing broad access to the widest possible range of factual data on the status and trends of the Nation's biota and the potential effects of land management choices.

The Secretary of the Interior issued Order No. 3185 on January 5, 1995, changing the name of the ''National Biological Survey'' to the ''National Biological Service'' to more accurately reflect the mission of the agency. Sec. 4 of Order No. 3185 reads: ''The primary role of the NBS is to meet the biological research needs of other organizations within the Department of the Interior, other Federal agencies, States, local entities, Tribes, and private and nonprofit users.'' The initiative addresses the role of NBS by gathering scientific information on sensitive species and their habitats. This information serves public and private landowners who are interested in sustaining biological resources. It also provides understanding to help avoid conflicts that can both stymie development and degrade natural habitats.

The Success With Species at Risk Initiative will develop scientific information and alternatives to assist Federal, State, and other land managers in their decisions regarding the protection of sensitive species and habitats and to allow the U.S. Fish and Wildlife Service to remove Category 2 species which do not merit further consideration.

C. Availability of Funds

Through this initiative, the NBS invites proposals for funding for Fiscal Year 1995. The total funding available for the fiscal year is up to $1 million. Monies will be provided to successful applicants on a competitive basis. In order to maximize the number of proposals there is no minimum project cost. The maximum project cost will be $100,000. When the biology of the study species dictates, monies awarded in Fiscal Year 1995 may be carried over into FY 1996, for the purposes of completing on-going field research.

D. Eligibility Requirements

The NBS will accept project proposals for this initiative from State agencies, private and industry groups, academic institutions, and Native American Tribes and Nations. Proposals will be evaluated by NBS scientists with respect to their scientific merit, partnership opportunities, quality of investigators and institutions, potential for providing useful information to resource managers, ecosystem and landscape benefits, potential for conservation agreements, possibilities for cost sharing, and demonstration of progress or successful completion in 1995.

E. Application Process

Parties interested in participating in this initiative should request an information package which will include detailed application forms, Federal Assistance forms (Standard Form 424, etc.), proposal format requirements, etc. from:

Mail: National Biological Service, Mail Stop 3660–MIB, 1849 C. Street NW, Washington, D.C. 20240, attn. John Mosesso or Wendy Kuhne, or *E-Mail:* MosessoJ@mail.fws.gov KuhneW@mail.fws.gov or *Telephone:* 202–482–3774.

F. Dates

Completed project proposals and Federal Assistance forms (Standard Form 424 etc.) must be received by the NBS on or before March 27, 1995.

Notification of project selection and funding will be made as early as April 26, 1995.

F. Eugene Hester,

Deputy Director, National Biological Service.

[FR Doc. 95–3160 Filed 2–8–95; 8:45 am]

BILLING CODE 4310–DP–P

AGENCY FOR INTERNATIONAL DEVELOPMENT

Public Information Collection Requirements Submitted to OMB for Review

The U.S. Agency for International Development (USAID) submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35). Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of the entry. Comments may also be addressed to, and copies of the submissions obtained from the Records Management Officer, Renee Poehls, (202) 736–4743, M/AS/ISS, Room 930B, N.S., Washington, DC 20523.

Date Submitted: January 27, 1995.

Submitting Agency: U.S. Agency for International Development.

OMB Number: None.

Form Number: None.

Type of Submission: Existing collection in use without OMB Control Number.

Title: Agency for International Development Acquisition Regulations (AIDAR) Clause 752.70.26.

Purpose: Section 635(b) of the Foreign Assistance Act (FAA) of 1961 authorizes USAID to contract with any corporation, international organization, or other body or persons in or out of the United States in furtherance of the purposes and within the limitations of the FAA. USAID presently administers some 500 contracts for technical services with total estimated costs of approximately $10 billion dollars. To determine how well contractors are performing to meet the requirements of the contract, USAID requires periodic performance reports from contractors. The performance reporting requirements are contained in the USAID Acquisition Regulations (AIDAR) clause 752.70.26. USAID has recently revised this clause to be responsive to the National Performance Review's (NPR) procurement reform agenda which emphasizes outputs over inputs. Whereas the reports required by the AIDAR clause focused on the process and compliance with regulations, it now focuses on performance and progress toward meeting contract objectives.

Annual Reporting Burden: Respondents: 250, Annual responses: 1000; Annual burden hours: 4000.

Reviewer: Jeffery Hill (202) 395–7340, Office of Management and Budget, Room 3201, New Executive Office Building, Washington, DC 20503.

Dated: February 27, 1995.

Genease E. Pettigrew,

Chief, Information Support Services Division, Office of Administrative Services, Bureau for Management.

[FR Doc. 95–3272 Filed 2–8–95; 8:45 am]

BILLING CODE 6116–01–M

INTERNATIONAL TRADE COMMISSION

[Investigation 337–TA–368]

Notice of Initial Determination Terminating Respondents on the Basis of Settlement Agreement

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above captioned investigation terminating the following respondents on the basis of a settlement agreement: Yuasa Corporation and Yuasa-Exide, Inc.

In the Matter of Certain Rechargeable Nickel Metal Hydride Anode Materials and Batteries, and Products Containing Same.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon parties on February 6, 1995.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

WRITTEN COMMENTS: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such documents must be filed with the Secretary to the Commission, 500 E Street, S.W., Washington, D.C. 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portions thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, Telephone (202) 205–1802.

Issued: February 3, 1995.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–3295 Filed 2–8–95; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 394 (Sub-No. 14)]

Cost Ratio For Recyclables—1995 Determination

AGENCY: Interstate Commerce Commission.

ACTION: Establishment of recyclables rate caps.

SUMMARY: The Commission has calculated proposed 1995 revenue-to-variable cost (r/vc) ratios as ceilings for rates on nonferrous recyclables under 49 U.S.C. 10731(e). The r/vc ratios were calculated in accordance with established procedures using the Uniform Railroad Costing System (URCS). Because URCS develops different variability percentages for

different railroads, the rules (49 CFR Part 1145) allow separate r/vc ratio ceilings for individual railroads. The proposed national average r/vc ratio for 1995 is 139.5%. Ratios are also proposed for individual class I railroads and for the Eastern region and the Western region. The Commission is deferring initiation of the fourth annual compliance proceeding.

EFFECTIVE DATE: March 1, 1995, unless, within that time, comments are received challenging the accuracy of the ratios, in which case a further decision will be issued.

FOR FURTHER INFORMATION CONTACT: Robert C. Hasek, (202) 927–6239; or H. Jeff Warren, (202) 927–6243. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, 1201 Constitution Avenue, N.W., Washington, DC 20423 or telephone (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721].

This decision will not significantly affect either the quality of the human environment or energy conservation.

Pursuant to 5 U.S.C. 605(b), we conclude that our action will not have a significant or adverse economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Authority: 49 U.S.C. 10321(a), 10731; 5 U.S.C. 553.

Decided: January 27, 1995.

By the Commission, Chairman McDonald, Vice Chairman Morgan, and Commissioners Simmons and Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 95–3249 Filed 2–8–95; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32549]

Burlington Northern Inc. and Burlington Northern Railroad Company—Control and Merger—Santa Fe Pacific Corporation and The Atchison, Topeka and Santa Fe Railway Company

AGENCY: Interstate Commerce Commission.

ACTION: Decision No. 9; Notice of Proposed Revision of Procedural Schedule.

SUMMARY: The Commission is seeking public comments on the applicants' proposal to revise the procedural schedule adopted in Decision Nos. 4 and 5 in this proceeding, served October 5, 1994, and November 10, 1994, respectively, to provide for issuance of a final decision within 165 days from the date on which the Commission decision containing notice of shareholder approval is served. To facilitate meeting that deadline and to help narrow the focus to the relevant issues, the Commission is proposing page limitations for certain filings and is considering issuing a preliminary scoping order.

DATES: Written comments must be filed with the Commission no later than February 21, 1995.

ADDRESSES: An original and 20 copies of all documents must refer to Finance Docket No. 32549 and be sent to the Office of the Secretary, Case Control Branch, Attn: Finance Docket No. 32549, Interstate Commerce Commission, 1201 Constitution Avenue, N.W., Washington, DC 20423.

In addition, one copy of all documents in this proceeding must be sent to the Honorable Stephen L. Grossman, FERC, Office of Hearings, 825 North Capitol Street, NE, Washington, D.C. 20426 and to each of applicants' representatives: (1) Betty Jo Christian, Esq., Steptoe & Johnson, 1330 Connecticut Avenue, N.W., Washington, DC 20036–1795; and (2) Erika Z. Jones, Esq., Mayer, Brown & Platt, 2000 Pennsylvania Avenue, N.W., Suite 6500, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon or Dugie Standeford, (202) 927–5610. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: On October 13, 1994, an application was filed for approval of Burlington Northern, Inc.'s (BNI) acquisition of, control of, and merger with Santa Fe Pacific Corporation (SFP), the resulting common control of Burlington Northern Railroad Company (BN) and The Atchison, Topeka and Santa Fe Railway Company (Santa Fe) by the merged company, the consolidation of BN and Santa Fe railroad operations and the merger of BN and Santa Fe. Applicants also seek exemption from regulation for the merged holding company and merged railroad to control The Wichita Union Terminal Railway Company [Finance Docket No. 32549 (Sub-No. 1)] and for 11 construction projects related to the primary application [Finance Docket No. 32549 (Sub-No. 2 through Sub-No. 12)]. We accepted the application in our Decision No. 5, served and published in the **Federal Register** on November 10, 1994 (59 FR 56089), and we set certain filing dates under the procedural schedule previously adopted in our Decision No. 4, served October 5, 1994.

In Decision No. 7, served December 5, 1994, we granted the requests of several parties and postponed the procedural schedule set forth in Decision Nos. 4 and 5 pending the outcome of an SFP shareholder vote. In Decision No. 7, we stated that upon approval of the proposed BNI/SFP merger by the shareholders, we would immediately issue a new schedule requiring the first comments to be filed 30 days later and adjusting other schedule dates accordingly. That shareholder vote has been postponed several times and is now scheduled for February 7, 1995.

In New Procedures in Rail Acquisitions, Mergers and Consolidations, Ex Parte No. 282 (Sub-No. 19) (ICC served Jan. 26, 1995) (60 FR 5890, January 31, 1995), we are seeking comments on our proposed establishment of more timely procedures for processing applications for major and significant rail combinations. In the January 26, 1995 Notice of Proposed Rulemaking, we gave all interested parties until March 2, 1995, to file written comments. We also served a copy of the notice on all parties on the service list in this merger proceeding and asked for comments on whether this case should be governed by the schedule originally adopted or the schedule proposed in Ex Parte No. 282 (Sub-No. 19).

By petition filed January 27, 1995, BNI, BN, SFP, and Santa Fe request that we adopt a modified, expedited procedural schedule which tracks the schedule proposed by the Commission for public comment in Ex Parte No. 282 (Sub-No. 19) in place of the original schedule. We are now seeking public comments on this proposal by the applicants to revise the procedural schedule previously established in this proceeding to provide for the service of a final decision no later than 165 days from the date the Commission serves its decision containing notice of shareholder approval of the proposed merger, as set out in Appendix A to this Notice. Additionally, to facilitate our meeting this deadline and to better focus the filings on relevant issues, we are proposing page limitations on all filings that should not require extensive evidentiary submissions. The specific limitations are set out in Appendix A to this notice. These limits would not extend to tables of contents, prefaces, tables of authorities, summaries of argument, and other introductory materials. Further, to help narrow the focus to relevant issues, we are

considering issuing a preliminary scoping analysis immediately after the filings due on day N+30 in Appendix A. We seek public comments on the proposed page limitations and scoping order. Given that the procedural schedule proposed here tracks the procedural schedule we are proposing in Ex Parte No. 282 (Sub-No. 19) for all major and significant consolidations, we also seek comments from any interested person on whether we should impose similar page limitations and employ a preliminary scoping analysis for future transactions under those proposed rules as well.

In Ex Parte No. 282 (Sub-No. 19), we noted that a vital element in carrying out the proposed expedited merger procedures is strict compliance with the Commission's environmental rules at 49 CFR Part 1105. These rules provide that environmental assessments normally be prepared in mergers, consolidations or acquisitions of control involving significant changes in operation or rail line abandonments and construction. If a merger is likely significantly to affect the environment, the National Environmental Policy Act (NEPA) requires the Commission to prepare an environmental impact statement (EIS).

To expedite the NEPA environmental review process, we have proposed in Ex Parte No. 282 (Sub-No. 19) that applicants be required to consult with the Commission's Section of Environmental Analysis (SEA) with, or prior to, the filing of their prefiling notices for all mergers involving the preparation of environmental documentation. In the case of mergers involving an environmental assessment, the new merger procedures would require that the applicant submit, with its application, a preliminary draft environmental assessment (PDEA), to be based on consultations with SEA and the various agencies set forth in 49 CFR 1105.7(b) of our environmental rules. SEA would then use the PDEA to prepare a draft environmental assessment for public comment.

In their January 27, 1995 petition, applicants in this proceeding point out that they have already submitted a comprehensive environmental report. According to applicants, that report, prepared by the third-party consulting firm, fully complies with the Commission's proposed requirement for the submission of a PDEA. Applicants further claim an exemption from the requirements of filing historical reports under 49 CFR 1105.8 and have advised the Commission that no structure which is 50 years old or older will be affected by the proposed merger. According to the applicants, their environmental report shows that the proposed consolidation will not result in any significant environmental impacts sufficient to require the preparation of an EIS. Finally, applicants state that their third-party consultant, already at work under SEA's supervision, is engaged in a detailed review of the environmental aspects of the proposed merger and that the current workplan calls for completion of an environmental document, following public comment, by early July 1995. Applicants assert that there is no reason to deviate from the expedited schedule contemplated in Ex Parte No. 282 (Sub-No. 19) to ensure compliance with the NEPA review process.

The filing of a PDEA is a predicate to the expedited schedule we proposed in Ex Parte No. 282 (Sub-No. 19). We also cautioned that mergers that involve actions that significantly affect the environment may require the preparation of an EIS, and that such a requirement would make it impossible to follow a 180-day schedule. Rail construction is such an action and the application contains requests for approval of 11 construction projects. We solicit further comments from the applicants and the parties on these environmental questions and suggestions on how to complete the environmental review process for the merger within the limits of the schedule proposed by the applicants.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Decided: February 2, 1995.

By the Commission, Chairman McDonald, Vice Chairman Morgan, and Commissioners Simmons and Owen.

Vernon A. Williams,

Secretary.

APPENDIX A.—PROPOSED REVISED, EXPEDITED PROCEDURAL SCHEDULE

N	Date Commission serves decision containing notice of shareholder approval on all parties.
N+5	Discovery conference on application held.
N+30	Comments and protests due on the application (not to exceed 50 pages); requested conditions due; description of anticipated inconsistent and responsive applications due.
N+35	Discovery conference on comments, protests and conditions held.
N+60	Inconsistent and responsive applications due. Response to comments, protests, conditions and rebuttal in support of primary applications due (not to exceed 100 pages).
N+65	Discovery conference on inconsistent applications held.
N+75	Notice of acceptance (if required) of inconsistent and responsive applications published in the **Federal Register**.
N+90	Response to inconsistent and responsive applications due (not to exceed 75 pages). Rebuttal in support of comments, protests, and conditions to the primary application due (not to exceed 50 pages).
N+100	Rebuttal in support of inconsistent and responsive applications due (not to exceed 50 pages).
N+110	Briefs due, all parties (not to exceed 50 pages).
N+125	Oral argument (at Commission's discretion).
N+135	Voting Conference (at Commission's discretion).
N+165	Date for service of decision.

Notes: Immediately upon each evidentiary filing, the filing party will place all documents relevant to the filing (other than documents that are privileged or otherwise protected from discovery) in a depository open to all parties, and will make its witnesses available for discovery depositions. Access to documents subject to protective order will be appropriately restricted. Parties seeking discovery depositions may proceed by agreement. Relevant excerpts of transcripts will be received in lieu of cross-examination at the hearing, unless cross-examination is needed to resolve material issues of disputed fact. Discovery on responsive applications will begin immediately upon their filing. The Administrative Law Judge assigned to this proceeding will have the authority initially to resolve any discovery disputes.

[FR Doc. 95–3251 Filed 2–8–95; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32636]

Baltimore and Annapolis Railroad Company—Acquisition and Operation Exemption—Mid Atlantic Railroad Co., Inc.

Baltimore and Annapolis Railroad Company (B&A), a non-operating entity,[1] has filed a notice of exemption to acquire and operate approximately 75.9 miles of rail line from Mid Atlantic Railroad Co., Inc. The lines extend: (1) From Mullins, SC (milepost AL 326.0) to Whiteville, NC (milepost AC 289.0); and (2) from Chadbourn, NC (milepost ACH 297.2) to Conway, SC (milepost ACH 336.1). B&A states that the acquired property will be operated by a division of B&A. Consummation was scheduled to take place on or before January 15, 1995.

Any comments must be filed with the Commission and served on: Kenneth Pippin, 100 West Maple Road, Linthicum, MD 21090.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: February 2, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–3250 Filed 2–8–95; 8:45 am]

BILLING CODE 7035–01–P

[Docket No. AB–55 (Sub-No. 474X)]

CSX Transportation, Inc.—Abandonment Exemption—in Warren County, NC

CSX Transportation, Inc. (CSXT), has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon approximately 3.28 miles of rail line extending (1) from milepost S–98.4 at Norlina to milepost S–100.9 at Ridgeway and (2) from milepost SA–115.55 at Norlina to the end of the track at milepost SA–114.77, in Warren County, NC.

CSXT has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (service of environmental report on agencies), 49 CFR 1105.8 (service of historic report on State Historic Preservation Officer), and 49 CFR 1152.50(d)(1) (service of verified notice on governmental agencies) have been met.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on March 11, 1995 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file offers of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by February 21, 1995.[3] Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by March 1, 1995, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Charles M. Rosenberger, CSX Transportation, Inc., 500 Water Street J150, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio*.

CSXT has filed an environmental report which addresses the abandonment's effects, if any, on the environmental or historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by February 14, 1995. Interested persons may obtain a copy of the EA from SEA by writing to it at (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEA at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: February 2, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–3253 Filed 2–8–95; 8:45 am]

BILLING CODE 7035–01–P

[Docket No. AB–397 (Sub-No. 3X)]

Tulare Valley Railroad Company—Abandonment and Discontinuance Exemption—In Tulare and Fresno Counties, CA

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Commission, pursuant to 49 U.S.C. 10505, exempts Tulare Valley Railroad Company (TVR) from the prior approval requirements of 49 U.S.C. 10903 et seq. to abandon 55.7 miles of rail line between: (1) Milepost 51.0 near Lac Jac and milepost 67.0 near Calwa, in Fresno County, CA, a distance of 16 miles; (2) milepost 49.8 near Reedley and milepost 38.5 near Cutler, in Tulare County, CA, a distance of 11.3 miles; (3) milepost 19.0 near Cutler and milepost 38.0 near Exeter, in Tulare County, a distance of 19.0 miles; and (4) milepost 20.6 near Wyeth and milepost 11.2 near Orange Cove, in Tulare County, a distance of 9.4 miles. In addition,

[1] On January 11, 1973, B&A filed an application in Docket No. AB–71 requesting permission to abandon operations over its entire line of track of 21.1 miles, extending from Clifford Junction in Baltimore City, MD, to the City of Annapolis, MD. In Baltimore and Annapolis R. Co. Abandonment, 348 I.C.C. 678 (1976), B&A was permitted to abandon operations over a portion of its line of railroad between Glen Burnie, MD, and Annapolis (approximately 15 miles).

On September 29, 1989, the Maryland Mass Transit Administration filed a notice of intent in Docket No. AB–71 (Sub-No. 2) (request for involuntary abandonment authority) to abandon the remaining portion of B&A's trackage between Clifford Junction and Glen Burnie (approximately 5.78 miles), for the purpose of constructing and operating a regional light rail transit system. B&A adds that in May 1991, the State took its right-of-way through a condemnation proceeding and constructed a passenger line (Central Light Rail Transit Line). As such, B&A presently holds no authority from the Commission.

[1] A stay will be issued routinely where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Environmental Analysis in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental grounds is encouraged to file promptly so that the Commission may act on the request before the effective date.

[2] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

[3] The Commission will accept late-filed trail use statements so long as it retains jurisdiction.

pursuant to 49 U.S.C. 10505, the Commission exempts TVR from the prior approval requirements of 49 U.S.C. 10903 to discontinue service over 1.2 miles between milepost 51.0 near Lac Jac and milepost 49.8 at Manning Avenue in Reedley. The exemptions are subject to historic, environmental and standard labor protective conditions.

DATES: Provided no formal expression of intent to file a financial assistance offer has been received, this exemption will be effective on March 11, 1995. Formal expressions of intent to file financial assistance offers [1] under 49 CFR 1152.27(c)(2) must be filed by February 21, 1995. Petitions to stay must be filed by February 24, 1995. Requests for a public use condition must be filed by March 1, 1995. Petitions to reopen must be filed by March 6, 1995.

ADDRESSES: Send pleadings referring to Docket No. AB–397 (Sub-No. 3X) to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, 1201 Constitution Avenue, N.W., Washington, DC 20423; and (2) Petitioner's representative: Mark H. Sidman, Weiner, Brodsky, Sidman & Kider, P.C., Suite 800, 1350 New York Avenue, NW, Washington, DC 20005–4797.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–5660. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, 1201 Constitution Avenue, N.W., Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Decided: January 26, 1995.

By the Commission, Chairman McDonald, Vice Chairman Morgan, Commissioners Simmons and Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 95–3254 Filed 2–8–95; 8:45 am]

BILLING CODE 7035–01–P

[1] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

DEPARTMENT OF JUSTICE

National Institute of Corrections

Advisory Board Meeting

Time and Date: 8:00 a.m., Wednesday, March 1, 1995.

Place: Old Town Holiday Inn, 480 King Street, Alexandria, Virginia.

Status: Open.

Matters to be Considered: Office of Justice Programs briefing on the Violent Offender Incarceration Grant Program, the Crime Bill provision assigned to NIC, pending amendments to the Crime Bill, update on the jail mental health policy statement, NIC's budget and funding, NIC's FY 1996 goals and program plan recommendations, and a briefing on the National Institute of Justice's Corrections research agenda.

For Further Information Contact: Larry Solomon, Deputy Director, (202) 307–3106, ext. 155.

Morris L. Thigpen,

Director.

[FR Doc. 95–3262 Filed 2–8–95; 8:45 am]

BILLING CODE 4410–36–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Request for Proposals for OSHA Training Institute Education Centers; Correction

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of change of date.

SUMMARY: This notice changes the deadline date for receipt of applications for OSHA Training Institute Education Centers previously published in the **Federal Register** December 13, 1994 (59 FR 64213). The date for receipt of applications has been extended from February 24, 1995, to March 17, 1995.

Dated: February 3, 1995.

Joseph A. Dear,

Assistant Secretary of Labor.

[FR Doc. 95–3202 Filed 2–8–94; 8:45 am]

BILLING CODE 7500–01–M

LIBRARY OF CONGRESS

Copyright Office

[Docket No. RM 95–1]

General Provisions—Copyright Restoration of Certain Berne and WTO Works

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of Policy Decision and Public Meeting.

SUMMARY: The Copyright Office publishes this notice to inform the public about its obligations concerning restoration of certain copyrights under the Uruguay Round Agreements Act (URAA) signed into law on December 8, 1994. This Act restores copyright in certain works effective January 1, 1996, and requires the Copyright Office to establish procedures for filing notices of intent to enforce copyright and for registering works in which copyright has been restored. This notice summarizes the Act's copyright restoration provisions and informs the public that there will be an open meeting to solicit information and discuss implementation of the copyright provisions on March 20, 1995.

DATES: A public meeting will be held in Room 414 of the James Madison Memorial Building, 101 Independence Avenue, S.E., Washington, D.C., on March 20, 1995, beginning at 10:00 a.m. Interested parties should send a statement of interest and issues list to the address given below by March 10, 1995.

FOR FURTHER INFORMATION CONTACT: Marilyn J. Kretsinger, Acting General Counsel, P.O. Box 70400, Southwest Station, Washington, D.C. 20024. Telephone (202) 707–8380. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION

I. Background

On December 8, 1994, President Clinton signed the Act which may be cited as the ''Uruguay Round Agreements Act'' (URAA), Pub. L. No. 103–465, 108 Stat. 4809. On December 15, 1993, the General Agreement on Tariffs and Trade (GATT) negotiators concluded the Uruguay Round which included an agreement on the Trade-Related Aspects of Intellectual Property Rights (TRIPs). President Clinton signed on to the World Trade Organization Agreement (WTO Agreement) on April 15, 1994. The URAA was introduced on September 27, 1994.

The URAA is a complex and lengthy document covering many areas of United States trade. Title V, sections 501–534, of this Act contains several significant copyright amendments. They amend the software rental provision found in 17 U.S.C. 109(b) by eliminating the expiration or sunset date (October 1, 1995), amend Titles 17 and 18 to create civil and criminal remedies for ''bootlegging'' sound recordings of live musical performances and music videos, and add a new 17 U.S.C. 104A to restore copyright in certain foreign works.

II. Restoration of Copyright of Eligible Works

Section 514 of the URAA restores copyright protection in certain foreign works still under protection in a source country but in the public domain in the United States. It also grants protection to sound recordings fixed prior to February 15, 1972.[1] Copyrights in eligible foreign works are restored automatically from the ''date of restoration.'' Since restoration is automatic, the owner of the restored copyright does not have to register this work. To qualify for restoration, a work must be an original work of authorship that is protected under subsection (a), is not in the public domain in the source country through expiration of the term of protection, and is in the public domain in the United States because of noncompliance with formalities, lack of subject matter protection in the case of a sound recording fixed before February 15, 1972, or lack of national eligibility. A further requirement to qualify is that, at the time the work was created, at least one author or rightholder (in the case of a sound recording) must have been a national or domiciliary of an eligible country; and if the work is published, it must not have been published in the United States within 30 days of first publication in the eligible country. Amended sec. 104A(h)(6).

An eligible country is one, other than the United States, that is a member of the Berne Convention for the Protection of Literary and Artistic Works (Berne Convention) or a member of the World Trade Organization (WTO) or is subject to a presidential proclamation that extends copyright restoration to works of that country on the basis of reciprocal treatment to the works of United States nationals or domiciliaries.

III. Effective Date of Restoration

Section 514(a) of the URAA provides that the initial date of restoration of a restored copyright is ''the date on which the Agreement on Trade-Related Aspects of Intellectual Property Rights referred to in section 101(d)(15) of the [URAA] enters into force with respect to the United States.'' Although questions have been raised about the actual date of copyright restoration established under section 514(a), in light of the entire URAA, the Statement of Administrative Action (SAA), the TRIPs Agreement, and other legislative history-related materials, the effective date of copyright restoration is January 1, 1996.

The SAA accompanying the legislation provides, in relevant part, that copyright will be restored on the date ''when the TRIPs Agreement's obligations take effect for the United States.''[2] The TRIPs Agreement states that no Member, including the United States, ''shall be obliged to apply the provisions of this Agreement before the expiry of a general period of one year following the date of entry into force of the Agreement Establishing WTO.''[3] Since the WTO came into effect on January 1, 1995, the TRIPs Agreement's obligations take effect for the United States on January 1, 1996. Consequently, January 1, 1996, is the date on which copyright will be restored under the URAA.

This conclusion is amply supported by the legislative history of the URAA and the practical necessities surrounding implementation of the restoration provision. The Joint Report on the Senate version of the URAA bill specifically states that the ''bill would automatically restore copyright protection for qualifying works * * * one year after the WTO comes into being.''[4] Furthermore, the Justice Department predicated its memorandum to the General Counsel to the United States Trade Representative as to the constitutionality of the restoration provisions on the date of restoration being January 1, 1996.[5] Finally, the URAA requires the Copyright Office to publish rules governing the filing of notices of intent to enforce a restored copyright 90 days before the day that copyright restoration takes place.[6] Because this publishing requirement would have been impossible to accomplish if the effective date were January 1, 1995, the only reasonable interpretation of the URAA is that the effective date of restoration is January 1, 1996.

IV. Notification to Reliance Parties

Concern for Reliance Parties

Congress was concerned about the effect of restoring copyrights to works already in the public domain; some of which are being actively and legally exploited in the United States. The URAA refers to the businesses and individuals using such works as reliance parties and immunizes them for their acts prior to the date of automatic copyright restoration. Reliance parties must stop reproducing any work in which a copyright is restored and must not prepare new derivative works that reproduce significant elements of a work on the date these parties have effective notice that an owner intends to enforce the restored work. This effective notice date is either the date the Copyright Office publishes in the **Federal Register** the list identifying the works on which notices of intent to enforce have been filed or the date the reliance party received actual notice of the owner's intent to enforce the restored copyright.

Filing Notices of Intent to Enforce Copyright

The URAA gives copyright owners of restored copyrights two ways to serve notice of their intent to enforce the copyright on reliance parties. They may file an intent to enforce the restored copyright in the work with the Copyright Office or they may serve actual notice of the intent to enforce the restored copyright against a particular reliance party. If they choose the second way, they will have to notify each reliance party who may have used a work and identify the use. Consequently, it seems possible that many owners of copyright in restored works will choose to file notices of intent to enforce copyright with the Copyright Office. Based on the notices received, the Office will publish lists of notices of intent to enforce restored works beginning in May 1996 and continuing at regular intervals not to exceed four months thereafter.

The URAA specifies the minimum content of the notices of intent to enforce. It requires that the notice be signed by the owner or the owner's agent.[7] In addition to the signature, it must contain the title, including an English-language translation, and any other alternative titles known to the owner by which the restored work may be identified, the name of the owner,

---

[1] URAA, title V, ''Intellectual Property,'' sec. 514, ''Restored Works.'' Further references to this section will be to the amended 104A.

[2] Congress specifically approved the Statement of Administrative Action (SAA). URAA sec. 101 (a)(2).

[3] Agreement on TRIPs, VI: Arrangements, Article 65.

[4] Joint Report of the Committee on Finance, Committee on Agriculture, Nutrition and Forestry, Committee on Governmental Affairs of the United States Senate to accompany the Uruguay Round Agreements Act, S. 2467, S. Rep. No. 412, 103d Cong., 2d Sess. 225 (1994).

[5] See Memorandum from Chris Schroeder, Counsellor to the Assistant Attorney General, Office of Legal Counsel, United States Dept. of Justice, to Ira S. Shapiro, General Counsel, USTR, on Whether Certain Copyright Provisions in the Draft Legislation to Implement the Uruguay Round of Multilateral Trade Negotiations Would Constitute a Taking Under the Fifth Amendment (July 29, 1994).

[6] Amended sec. 104A(e)(1)(D)(i).

[7] Ownership of a restored work vests initially in the author or initial rightholder (if the work is a sound recording) of the work as determined by the law of the source country of the work. Amended sec. 104A(b).

and an address and telephone number at which the owner can be located. Although the Office can ask for additional information, failure to provide such information will not invalidate the notice of intent.

Grace Period

Reliance parties have a 12 month grace period after they have been notified either by publication in the **Federal Register** or by actual notice to sell off previously manufactured stock, to publicly perform or publicly display the work, or to authorize others to conduct these activities. Except for reliance parties who created derivative works, reliance parties must cease using the work after the 12-month grace period unless they reach a licensing agreement with the copyright owner for continued use of the restored work. Subsection (d)(3) of amended section 104A contains special rules with respect to derivative works based on underlying foreign works in which copyright has been restored such as a translation of a foreign language work or a motion picture based on a book or a play.

Procedure for Notification

The Copyright Office will publish final regulations establishing the procedures for filing notices of intent to enforce by October 1, 1995. Owners of restored copyrights in eligible countries may begin filing notices of intent to enforce restored copyrights on January 1, 1996.

Registration of Restored Works

The URAA also directs the Copyright Office to establish procedures permitting the owners of restored copyright to file applications to register a claim to copyright simultaneously with the notice of intent. The Office will also publish these procedures by October 1, 1995.

V. Public Comment on Procedures for Notices of Intent to Enforce and Registration

The restoration provisions are complex, and we have a number of questions about their implementation. To assist us in identifying all of the issues and to move the process forward, we are soliciting public comment, including comment from both potential owners of restored works and potential reliance parties. We will hold a public meeting in Room 414 of the James Madison Memorial Building of the Library of Congress, 101 Independence Ave. S.E. at 10:00 a.m. on March 20. Parties wishing to attend the meeting should notify the Acting General Counsel by March 10, 1995, by writing to Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, D.C. 20024, calling (202) 707–8380, or via telefax: (202) 707–8366. Their notification should give the party's name, an indication of association, an address and telefax number and, if possible, identify the issues he or she wish to address. Since the Office will be publishing a Notice of Proposed Rulemaking after the March 20 meeting, it will accept comments on the implementation procedures through April 18, 1995. Any party who wishes to receive the Notice of Proposed Rulemaking should let the Office know.

With respect to the issues, we are focusing on the notices of intent to enforce and the registration procedures. For example, one question is what additional information should be included in the notices of intent to enforce? What should be the extent of the indexing record? Should the notices be integrated into the online files of the Copyright Office and made available on the Internet? Can, and should, the Office publish in the **Federal Register** at shorter intervals than the four months specified in the statute? Finally, what should the filing fee be?

With respect to registration, should there be a new registration form for restored copyrights? With respect to the author, for purposes of registration, should the author be the author as defined in section 201 of the United States copyright law or the author as determined by the law of the source country? Should the application form require a designation of the source country? Who should be listed as the claimant—the author as determined by the law of the source country (or, if the work is a sound recording, the rightholder) or the individual or entity that owns all of the restored rights in the United States on the date the application is submitted? If the answer is other than the party that the rights vested in, should a transfer statement be required? How detailed should a transfer statement be, that is, should it, for example, include the date of the transfer? What should the fee for registration be? With respect to the deposit of copies and phonorecords, should the current practices apply or should new provisions be crafted?

Dated: February 3, 1995.

Marybeth Peters,

Register of Copyrights.

James H. Billington,

The Librarian of Congress.

[FR Doc. 95–3255 Filed 2–8–95; 8:45 am]

BILLING CODE 1410–30–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 95–019]

Executive Order (EO) 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of availability of Draft Environmental Justice Strategy.

SUMMARY: Pursuant to EO 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, NASA has issued a Draft Environmental Justice Strategy (hereinafter referred to as the ''Draft Strategy''). This Draft Strategy has been developed to ensure that environmental justice is made part of the Agency's mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its actions on low-income populations and minority populations in the United States and its territories and possessions, the District of Columbia, the Commonwealth of Puerto Riceo, and the Commonwealth of the Mariana Islands.

DATES: Comments on the Draft Strategy must be provided in writing to NASA on or before March 1, 1995.

ADDRESSES: Comments should be addressed to Mr. R.E. Hammond, Director, Environmental Management Division, NASA Headquarters, Code JE, 300 E Street SW., Washington, DC 20546. The Draft Strategy may be reviewed at the following location:

(a) NASA Headquarters, Library, Room 1J20, 300 E Street SW., Washington, DC 20546.

In addition, the Draft Strategy may be examined at the following NASA locations by contacting the pertinent Freedom of Information Act Office:

(b) NASA, Ames Research Center, Moffett Field, CA 94035 (415–604–4191).

(c) NASA, Dryden Flight Research Center, Edwards, CA 93523 (805–258–3047).

(d) NASA, Goddard Space Flight Center, Greenbelt, MD 20771 (301–286–0730).

(e) Jet Propulsion Laboratory, NASA Resident Office, 4800 Oak Grove Drive, Pasadena, CA 91109 (818–354–5179).

(f) NASA, Johnson Space Center, Houston, TX 77058 (713–483–8612).

(g) NASA, Kennedy Space Center, FL 32899 (407–867–2622).

(h) NASA, Langley Research Center, Hampton, VA 23665 (804–864–6125).

(i) NASA, Lewis Research Center, 21000 Brookpark Road, Cleveland, OH 44135 (216–433–2902).

(j) NASA, Marshall Space Flight Center, AL 35812 (205–544–4523).

(k) NASA, Stennis Space Center, MS 39529 (601–688–2164).

Copies of the Draft Strategy are available free of charge by contacting Mr. R.E. Hammond, at the address or telephone number indicated herein or by contacting The National Center for Environmental Publications and Information, Post Office Box 42419, Cincinnati, Ohio 45202; Phone: 513–489–8190; FAX: 513–489–8695.

FOR FURTHER INFORMATION CONTACT: Mr. R.E. Hammond, 202–358–1095.

SUPPLEMENTARY INFORMATION: EO 12898 mandates that each Federal agency, to the maximum extent practicable, make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies and activities on low-income populations and minority populations. An integral element of each agency's efforts to attain this goal is the development of an agencywide environmental justice strategy. NASA has requested that the National Environmental Justice Advisory Committee be afforded an opportunity to review and comment on the Agency's draft strategy before the NASA Final Environmental Justice Strategy is developed and issued. Similarly, to satisfy the intent of section 5–5(a) of the EO, public comments received will be taken into account in formulating the Agency's final strategy.

Benita A. Cooper,

Associate Administrator for Management Systems and Facilities.

[FR Doc. 95–3256 Filed 2–8–95; 8:45 am]

BILLING CODE 7510–01–M

[Notice (95–020)]

NASA Advisory Council, Space Science Advisory Committee, Space Physics Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Science Advisory Committee, Space Physics Subcommittee.

DATES: Tuesday, February 28, 1995, 8:30 a.m. to 6 p.m.; and Wednesday and Thursday, March 1 and 2, 1995, 8:30 a.m. to 5 p.m.

ADDRESSES: National Aeronautics and Space Administration, 300 E Street, SW., February 28, 1995, Conference Room MIC 7, side A and B, and March 1 and 2, 1995, 9th floor Program Review Center, Room 9H40, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. George L. Withbroe, Code SS, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–1544.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting is as follows:

—Space Physics Division Overview: Budget, Ongoing Program, Future Activities
—Program Reports for Magnetospheric Physics, Cosmic and Heliospheric Physics, Solar Physics, Ionospheric-Thermospheric-Mesospheric Physics
—Space Physics Research and Analysis Program.
—Suborbital Program
—Strategic Planning
—Discussion and Writing Groups

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: February 3, 1995.

Timothy M. Sullivan,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 95–3257 Filed 2–8–95; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL CREDIT UNION ADMINISTRATION

Public Information Collection Requirement Submitted to OMB for Review

Date: January 26, 1995.

The National Credit Union Administration submitted the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission may be obtained by calling the NCUA Clearance Officer listed. Comments regarding information collections should be addressed to the OMB reviewer listed and to the NCUA Clearance Officer, NCUA, Office of Administration, Room 4009, 1775 Duke Street, Alexandria, VA 22314–3428.

National Credit Union Administration

OMB Number: 3133–004

Form Number: NCUA 5300 and NCUA 5300S

Type of Review: Reinstatement, with change, of previously approved collection.

Title: Semiannual and Quarterly Financial and Statistical Report.

Description: The financial and operational information collected is essential to NCUA in carrying out its responsibility for supervising federal credit unions. The information also enables NCUA to monitor federal credit unions and those credit unions, federal and state, whose share accounts are insured by the National Credit Union Share Insurance Fund (NCUSIF).

Proposed changes to the 5300 Call Report are primarily in response to the increasing risks and complexity associated with today's investment environment and practices. On the Call Report Investment Schedule a new section has been added for reporting the aggregates of investments that are classified as *Held-to-Maturity, Available-for-Sale, and Trading.* These classifications are required for compliance with Statement of Financial Accounting Standards 115. To the Call Report balance sheet has been added a line for reporting *accumulated unrealized gains (losses) on available for sale securities.* Also, a new line has been added to the Investment Schedule, under the Miscellaneous section, for the amount of *investment in mortgage derivative products that are defined as high risk securities* per NCUA's Interpretive Ruling and Policy Statement 92–1.

Respondents: All credit unions.

Estimated Number of Respondents: 12,300

Estimated Burden Hours per Response: 8 hours.

Frequency of Response: Quarterly and semiannually.

Estimated Total Reporting Burden: 235,200 hours.

Clearance Officer: Wilmer A. Theard (703) 518–6410, National Credit Union Administration, Room 4009, 1775 Duke Street, Alexandria, VA 22314–3428.

OMB Reviewer: Milo Sunderhauf (202) 395–5167, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Becky Baker,

Secretary of the NCUA Board.

[FR Doc. 95–3276 Filed 2–8–95; 8:45 am]

BILLING CODE 7535–01–M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Cooperative Agreement for the Continued Management and Administration of a Stage Designer Fellows Project

AGENCY: National Endowment for the Arts, NFAH.

ACTION: Notification of availability.

SUMMARY: The National Endowment for the Arts is requesting proposals leading to the award of a Cooperative Agreement for the continued management and administration of a Stage Designer Fellows program. The recipient of the Cooperative Agreement will be responsible for all aspects of the program including the solicitation of applications for a fellowship, convening of a panel for the selection process, the award of six fellowships of $15,000 each, the development and coordination of appropriate assignments for the Stage Designers, and the disbursement of funds to the fellows. Those interested in receiving the Solicitation package should reference Program Solicitation PS 94–04 in their written request and include two (2) self-addressed labels. Verbal request for the Solicitation will not be honored.

DATES: Program Solicitations PS 94–04 is scheduled for release approximately February 28, 1995 with proposals due March 28, 1995.

ADDRESSES: Requests for the Solicitation should be addressed to National Endowment for the Arts, Contracts Division, Room 217, 1100 Pennsylvania Avenue NW., Washington, D.C. 20506

FOR FURTHER INFORMATION CONTACT: William I. Hummel, Contracts Division, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, D.C. 20506 (202/682–5482).

William I. Hummel,

Director, Contracts and Procurement Division.

[FR Doc. 95–3277 Filed 2–8–95; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Biological Sciences; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following 3 meetings:

Name: Special Emphasis Panel in Biological Science (1754).

Place: 4201 Wilson Boulevard, Arlington, VA 22230.

Date and time	Fellowship name	Room No.
February 28, 1995 8:30–5	Molecular Evolution	320
March 1, 1995 8:30–5		320
March 22, 1995 8:30–5	Biosciences Related to the Environment	330
March 23, 1995 8:30–5		330
March 24, 1995 8:30–5		360
March 29, 1995 8:30–5	Minority Postdoctoral	380
March 30, 1995 8:30–5	Research Fellowships	380

Agenda: To review and evaluate applications as part of the selection process for fellowships.

Type of Meeting: Closed.

Contact Person: Ms. Carter Kimsey, Program Manager, Biological Instrumentation & Resources, Room 615, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 2230, (703) 306–1469.

Purpose of Meetings: To provide advice and recommendations on applications for postdoctoral fellowships submitted to NSF for financial support.

Reason for Closing: The applications being reviewed include information of a proprietary or confidential nature, including technical information and personal information on individuals. These matters are exempt under 5 USC 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 6, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–3225 Filed 2–8–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Chemistry; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name and Committee Code: Special Emphasis Panel in Chemistry (#1191)

Date and time: February 27–28, 1995, 8:00 a.m. to 5:00 p.m.

Place: Rooms 365, 370, 390, NSF, 4201 Wilson Boulevard, Arlington, VA 22230

Type of Meeting: Closed

Contact Person: Dr. Francis Wodarczyk, Program Director, Office of Special Projects, Chemistry Division, Room 1055, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1856.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals for Faculty Early Career Development (CAREER) Program in Chemistry.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; and personal information concerning individuals associated with the applications. These matters are exempt under 5 U.S.C.552 b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: February 6, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–3226 Filed 2–8–95; 8:45 am]

BILLING CODE 7555–01–M

Advisory Committee for Education and Human Resources; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Committee for Education and Human Resources (#1119).

Date and Time: February 27–28, 1995; 8:30 am–5:00 pm.

Place: National Science Foundation, 4201 Wilson Blvd., Room 310, Arlington, VA.

Type of Meeting: Closed.

Contact Person: William McHenry, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1632.

Purpose of Meeting: To carry out Committee of Visitors (COV) review, including examination of decisions on proposals, reviewer comments, and other privileged materials.

Agenda: To provide oversight review of the Research Careers for Minority Scholars.

Reason for Closing: The meeting is closed to the public because the Committee is reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they were disclosed. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act would be improperly disclosed.

Dated: February 6, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–3227 Filed 2–8–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Information Robotics and Intelligent Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Information Robotics and Intelligent Systems

Date and Time: February 27–28, 1995, 8:00 a.m. to 5:00 p.m.

Place: Double Tree Hotel, 300 Army Navy Drive, Arlington, VA 22202

Type of Meeting: Closed

Contact Person: Dr. Howard Moraff, Acting Deputy Division Director, Robotics and Intelligence, Room 1115, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1928.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Knowledge Models & Cognitive Systems, Robotics and Machine Intelligence, and Database & Expert Systems proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial date, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 6, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–3228 Filed 2–8–95; 8:45 am]

BILLING CODE 4555–01–M

Special Emphasis Panel in Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463 as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Materials Research (DMR).

Date and Time: February 28, 1995, 8:30 am to 5:00 pm.

Place: National Science Foundation Conference Room 1060, 4201 Wilson Boulevard, Arlington, VA 22230

Type of Meeting: Closed.

Contact Person: Dr. Amar Bhalla, Program Director, Ceramics, Division of Materials Research, Room 1065, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone (703) 306–1836.

Purpose of Meeting: To provide advice and recommendations concerning support for NSF Faculty Early Career Development (CAREER) Program.

Agenda: Evaluation of proposals.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552 b. (c) (4) and (6) of the Government in the Sunshine Act.

Dated: February 6, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–3229 Filed 2–8–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Mathematical Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Mathematical Sciences (1204).

Date and Time: March 2–3, 1995; 8:30 a.m. til 5:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 1020, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr Keith Crank, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230 Telephone: (703) 306–1885.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to National Science Foundation for financial support.

Agenda: To review and evaluate proposals concerning the University Industrial Cooperative Research Program, as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552(c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 6, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–3230 Filed 2–8–95; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–213]

Connecticut Yankee Atomic Power Company; Haddam Neck Plant; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–61, issued to Connecticut Yankee Atomic Power Company (CYAPCO, the licensee), for operation of the Haddam Neck Plant, located in Middlesex County, Connecticut.

Environmental Assessment

Identification of the Proposed Action

The proposed amendment will revise the Haddam Neck Technical Specifications (TS) to support Cycle 19 operation with the use of Westinghouse Vantage 5H fuel assemblies with up to 5.0 weight percent (w/o) nominal fuel into the reactor core. The proposed action is in accordance with the licensee's amendment request dated May 17, 1994, as supplemented September 9, 1994.

The Need for the Proposed Action

Beginning with Cycle 19, the fuel vendor for the licensee will change from Babcock & Wilcox Fuel Company (B&WFC) to Westinghouse (W). CYAPCO plans to operate Cycle 19 for 490 effective full power days (EFPD) with approximately one-third of the core containing Westinghouse Vantage 5H fuel assemblies. The use of the Westinghouse fuel will require the performance of various analyses to ensure safe operation of the plant. The TS change is necessary to allow the Haddam Neck Plant to load up to 5.0 weight percent (w/o) nominal fuel into the reactor core and to incorporate by reference the appropriate methodologies used for the fuel analyses into the TSs.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revision to the TS. The staff has concluded that the proposed TS changes involving the change in the linear heat generation rate (LHGR) uncertainties, use of the WRB-1 methodology, removal of cycle specific references and inclusion of additional references are primarily administrative in nature and support the use of the Westinghouse Vantage 5H fuel assemblies in the Haddam Neck reactor core. The plant will continue to

be operated safely with the use of the 5.0 w/o nominal U–235 fuel with its slightly different length and weight and the changes in this package associated with the WRB-1 correlation, the limitation on void fraction, the uncertainties associated with LHGR, or the administrative changes to Section 5.0 and 6.9, since plant operation and fuel placement are still predicated on the limitations contained in the TSs, Technical Report for Supporting Cycle Operation and plant procedures. The use of the Westinghouse methodologies for Cycle 19 operation are an application of a generically approved methodology by the NRC. The staff has reviewed the plant specific application to assure that the cycle specific parameters have been chosen to ensure the plant is operated safely.

The proposed TS change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with this proposed TS amendment.

With regard to potential nonradiological impacts, the proposed amendment does involve features located entirely within the restricted area as defined in 10 CFR part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

The environmental impacts of transportation resulting from the use of more highly enriched fuel and extended burnup rates have been discussed in the generic stafff assessment entitled ''NRC Assessment of the Environmental Effects of transportation Resulting from Extended Fuel Enrichment and Irradiation,'' dated July 7, 1988, and published in the **Federal Register** on August 11, 1988 (53 FR 30355) as corrected on August 24, 1988 (53 FR 32322). As indicated therein, the environmental cost contribution of the proposed increase in fuel enrichment and irradiation limits are either unchanged or may in fact be reduced from those summarized in Table S–4 as set forth in 10 CFR 51.52(c).

Therefore, the staff concludes that there are no significant radiological or nonradiological environmental impacts associated with the proposed amendment.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed amendment, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of resources not considered previously in the Final Environmental Statement for the Haddam Neck Plant.

Agencies and Persons Consulted

In accordance with its stated policy, the staff consulted with the Connecticut State official regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed amendment.

For further details with respect to this proposed action, see the licensee's letter dated May 17, 1994, as supplemented September 9, 1994, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room located at the Russell Library, 123 Broad Street, Middletown Connecticut 06547.

Dated at Rockville, Maryland, this 3rd day of February 1995.

For The Nuclear Regulatory Commission.

Phillip F. McKee,

Director, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–3231 Filed 2–8–95; 8:45 am]

BILLING CODE 7590–01–M

Connecticut Yankee Atomic Power Co.; Haddam Neck Plant; Environmental Assessment and Finding of No Significant Impact

[Docket No. 50–213]

The U.S. Nuclear Regulatory Commission (the ''Commission'') is considering issuance of an amendment to Facilitate Operating License No. DPR–61, issued to Connecticut Yankee Atomic Power Company (CYAPCO, the licensee), for operation of the Haddam Neck Plant, located in Middlesex County, Connecticut.

Environmental Assessment

Identification of the Proposed Action

The proposed amendment would revise Technical Specifications (TS) 3.1.1.3, ''Shutdown Margin,'' and TS 3.3.3.9, ''Boron Dilution Alarm,'' and their associated Bases sections and add a new TS 3.1.1.4, ''Shutdown Margin.'' TSs 3.1.2.2, 3.1.2.4, and 3.1.2.6, will be revised to reference TS 3.1.1.3 rather than specify the required shutdown margin at 200° F. In addition, editorial changes will be made to a reference on TS pages 3/4 1–13 and 14 to reletter surveillance specification 4.5.1.c.3 to 4.5.1.b.3. The proposed action is in accordance with the licensee's amendment request dated September 7, 1994.

The Need for Proposed Action

During the development of the core design for the upcoming Cycle 19, CYAPCO determined that the incore neutron sources would have to be relocated during the refueling outage due to mechanical considerations concerning the new fuel design. As part of the determination of the new locations for these sources, a review of the adequacy of the existing source locations was made. This review identified that the incore neutron sources were located too close to the excore detectors. As a result of the current incore neutron locations, the response of the excore detectors to a dilution event did not bound the response assumed in the safety analysis. The time allowed for operator action to terminate an inadvertent boron dilution event was less than the required 15 minutes from the time of the alarm to criticality. TS changes are being proposed to the shutdown margin requirements for Modes 4 and 5 and the boron dilution setpoint to assure that the required margin for operator action in a boron dilution accident is met. The associated Bases sections will be modified to reflect the new shutdown margin and boron dilution setpoint. In addition, an administrative change to three TSs will be made to reference the shutdown margin TS rather than provide the shutdown margin requirements and two editorial changes to correct two references to surveillance specifications 4.5.1.c.3 that had been

related to 4.5.1.b.3 in a previous TS change.

Environmental Impacts to the Proposed Action

The proposed changes will provide additional time for operator action in a boron dilution event to assure that there is at least 15 minutes between the time to boron dilution alarm assuming an alarm penalty of 1.3 and the time to criticality for Modes 1 through 5 and 30 minutes for Mode 6 for operator action. The Commission has completed its evaluation of the proposed TS changes and concludes that the combination of the shutdown margin increases and the lower credited boron dilution alarm setpoint assuming an alarm penalty factor of 1.3 will provide assurance that the criteria for operator action will be met. In addition, the neutron sources will be moved further away from the excore detectors for the Cycle 19 startup (approximately March 1995). This will provide additional margin in the alarm setpoint as the need for any penalty factor will be significantly reduced or completely eliminated. In addition, the staff agrees that the change in references in TS 3.1.2.2, 3.1.2.4, and 3.1.2.6, and Surveillance Specifications 4.1.2.3.1 and 4.1.2.4.1 are editorial in nature.

The proposed TS change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offiste, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with this proposed TS amendment.

With regard to potential nonradiological impacts, the proposed amendment does involve features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed amendment, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of resources not considered previously in the Final Environmental Statement for the Haddam Neck Plant.

Agencies and Persons Consulted

In accordance with its stated policy, the staff consulted with the Connecticut State official regarding the environmental impact of the proposed action. The State official has no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed amendment.

For further details with respect to this proposed action, see the licensee's letter dated September 7, 1994, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Russell Library, 123 Broad Street, Middletown, CT 06547.

Dated at Rockville, Maryland, this 3rd day of February 1995.

For the Nuclear Regulatory Commission.

Phillip F. McKee,

Director, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–3232 Filed 2–8–95; 8:45 am]

BILLING CODE 7590–01–M

Northeast Nuclear Energy Company; Millstone Nuclear Power Station, Unit No. 3; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–49, issued to Northeast Nuclear Energy Company (the licensee), for operation of the Millstone Nuclear Power Station, Unit No. 3, located in New London County, Connecticut.

Environmental Assessment

Identification of the Proposed Action

The proposed action would revise Technical Specification (TS) 3.5.2.a by granting a one-time extension of the allowable Residual Heat Removal (RHR) pump outage time for mechanical seal replacement and related modifications from 72 hours to 120 hours. This exception would only be used one time per pump and expire on April 30, 1995. The amendment would clearly define the times in which each RHR pump and associated RHR heat exchanger must be restored to an operable state.

The proposed action is in accordance with the licensee's application for amendment dated August 16, 1994, as supplemented by letter dated January 10, 1995.

The Need for the Proposed Action

The proposed action would reduce the potential for an unnecessary plant shutdown, thus, eliminating a source of unnecessary challenges to the plant's safety systems.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that one-time extension of the RHR pump outage time from 72 hours to 120 hours to acceptable.

The change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does involve features located entirely within the restricted area as defined in 10 CFR part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Millstone Nuclear Power Station, Unit No. 3.

Agencies and Persons Consulted

In accordance with its stated policy, the staff consulted with the Connecticut State official regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated August 16, 1994, as supplemented by letter dated January 10, 1995, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Learning Resource Center, Three Rivers Community-Technical College, Thames Valley Campus, 574 New London Turnpike, Norwich, CT 06360.

Dated at Rockville, Maryland, this 3rd day of February 1995.

For the Nuclear Regulatory Commission

Phillip F. McKee,

Director, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–3233 Filed 2–8–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–413]

Duke Power Company, et al.; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–35 issued to Duke Power Company (the licensee) for operation of the Catawba Nuclear Station, Unit 1, located in York County, South Carolina.

The proposed amendment request would propose the renewal for Catawba Unit 1 Cycle 9 operation of the steam generator tube inspection bobbin probe voltage-based interim plugging criteria that had been previously approved for Cycle 8. Approval of this amendment will preclude unnecessary plugging or repairing tubes by sleeving due to the occurrence of outer diameter initiated stress corrosion cracking (ODSCC) at the tube support plate elevations in the Catawba Unit 1 steam generators. The interim plugging criteria approved for Cycle 8 and contained in the draft Generic Letter 94–XX, ''Voltage-Based Repair Criteria for the Repair of Westinghouse Steam Generator Tubes Affected by Outside Diameter Stress Corrosion Cracking,'' can be summarized as follows:

Flaw indications with a bobbin coil voltage less than or equal to 1.0 volt can remain in service without further action. For flaw indications in excess of 1.0 volt but less than 2.7 volts, the tube can remain in service provided an RPC inspection of the indication does not detect ODSCC or any other degradation mode. Crack indications above 2.7 volts will be plugged or repaired by sleeving, and do not require RPC confirmation.

This amendment request reflects the ''Requested Actions: for a licensee that chooses to implement a steam generator tube interim plugging criteria, as stated in the draft NRC Generic Letter, 94–XX ''Voltage-Based Repair Criteria for the Repair of Westinghouse Steam Generator Tubes Affected by Outside Diameter Stress Corrosion Cracking.''

The changes being proposed to the Technical Specification (TS) do not alter the interim plugging criteria currently stated in the TS which was approved and utilized during Cycle 8. The primary change to the TS is to incorporate the guidance of draft Generic Letter 94–XX, ''Voltage-Based Repair Criteria for the Repair of Westinghouse Steam Generator Tubes Affected by Outside Diameter Stress Corrosion Cracking,'' which will allow removal of the cycle-specific limitation currently in the TS.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Operation of Catawba Unit 1 in accordance with the proposed license amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

A single tube rupture is not anticipated during operation of Catawba Unit 1. Based on the existing data base, the limiting RG [Regulatory Guide] 1.121 criterion for tube burst capability of 3 times normal operating differential is satisfied with ¾″ diameter tubing with bobbin coil indications with signal amplitudes less than 4.54 volts, regardless of the indicated depth measurement. This structural limit is based on a lower 95% prediction bound of the data and using LTL material properties. A 1.0 volt plugging criteria compares favorably with the structural limit considering the previously calculated growth rates for ODSCC within the Catawba Unit 1 steam generators. Assuming a voltage increase of 0.4 volts, and adding a 14% NDE uncertainty of 0.14 volts (90% cumulative probability) to the interim plugging criteria [IPC] of 1.0 volt results in an EOC [end-of-cycle] voltage of approximately 1.6 volts. This end of cycle voltage compares favorably with the Structural Limit of 4.54 volts. The applicability of assumed growth rates for each cycle of operation will be confirmed prior to return to power of Catawba Unit 1. A similar structural margin is anticipated for subsequent cycles.

In addition, for an EOC voltage structural limit of 4.54 volts, applying the 40% growth allowance and the 14% NDE uncertainty results in a margin between the structural limit and the alternate repair limit (2.7 volts), which is well within the structural limit. This repair limit will be applied for IPC implementation to repair bobbin indications greater than 2.7 volts independent of RPC confirmation of the indication.

Concerning SLB [steamline break] leakage in support of implementation to the interim plugging criteria, it will be determined whether the distribution of cracking indications at the tube support plate intersections at the end of a cycle are projected to be such that primary to secondary leakage would result in site boundary doses within the pertinent 10 CFR 100 limits. The SLB leakage rate calculation methodology * * * will be used to calculate End of Cycle SLB leakage. Based on EOC 8 projections, it is calculated that leakage during a postulated SLB event at the EOC 8 will be limited to approximately 1.61 gpm which is shown to result in acceptable dose consequences. [An] SLB leakage of 17.5 gpm in the faulted loop results in dose consequences which are less than the pertinent 10 CFR 100 limits. Similar results are expected for subsequent cycles and confirmation of leak rates will be performed prior to placing the [s]team generators in service.

Therefore, renewal of the proposed 1.0 volt interim plugging criteria does not adversely affect steam generator tube integrity and results in acceptable dose consequences. The proposed amendment does not result in any increase in the probability or consequences of an accident previously evaluated within the Catawba Unit FSAR [Final Safety Analysis Report].

(2) The proposed license amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Renewal of the proposed steam generator tube interim plugging criteria does not introduce any significant changes to the plant design basis. Use of the criteria does not provide a mechanism which could result in an accident outside of the region of the tube support plat elevations—no ODSCC is occurring outside the thickness of the tube support plates. Neither a single or multiple tube rupture event would be expected in a steam generator in which the plugging criteria has been applied (during all plant conditions).

Upon application of the interim plugging criteria, no primary to secondary leakage during normal operation is anticipated during all plant conditions due to degradation at the tube support plate elevations in the Catawba Unit 1 steam generators. However, additional conservatism is built into the existing operating leakage limit with regard to protection against the maximum permissible single crack length which may be achieved during operation due, in large part, to the potential occurrence of through-wall cracks at locations other than the tube support plate intersections.

Application of the 1.0 volt interim steam generator tube plugging criteria at Catawba Unit 1 is not expected to result in tube burst during all plant conditions during operation. Tube burst margins are expected to meet RG 1.121 acceptance criteria. The limiting consequence of the application of the interim plugging criteria is a potential for SLB leakage. The methodology for calculating SLB leak rate uses a voltage-to-leakage correlation and this methodology has previously been reviewed and approved by the NRC. The SLB leakage value will be confirmed to be less than allowable levels prior to return to power of Catawba Unit 1. No unacceptable leakage is anticipated at normal operating or RCP locked rotor conditions.

Therefore, as the existing tube integrity criteria and accident analyses assumptions and results will continue to be met, the proposed license amendment does not create the possibility at a new or different kind of accident from any previously evaluated.

(3) The proposed license amendment does not involve a significant reduction in [a] margin of safety.

The use of the voltage based bobbin probe interim tube support plate elevation plugging criteria at Catawba Unit 1 is demonstrated to maintain steam generator tube integrity commensurate with the criteria of Regulatory Guide 1.121. [Regulatory Guide] 1.121 describes a method acceptable to the NRC staff for meeting GDCs [General Design Criteria] 14, 15, 31, and 32, by reducing the probability or the consequences of steam generator tube rupture. This is accomplished by determining the limiting conditions of degradation of steam generator tubing, as established by inservice inspection, for which tubes with unacceptable cracking should be removed from service. Implementation of the bobbin probe voltage based interim tube plugging criteria of 1.0 volt is supplemented by enhanced eddy current inspection guidelines to provide consistency in voltage normalization, a 100% eddy current inspection at the tube support plate elevations, and rotating pancake coil inspection requirements for the larger indications left in service to characterize the principle degradation as ODSCC. Even under the worst case conditions, the occurrence of ODSCC at the tube support plate elevations is not expected to lead to a steam generator tube rupture event during normal or faulted plant conditions.

Based on the analyses for Cycle 8, the expected leakage values and the leakage conditions required to be confirmed during accidents creating high differential pressures across the steam generator tubes (e.g. SLB), dose analysis confirm the maximum permissible leakage will result in offsite dose consequences within the guideline values. [An] MSLB accident with assumed leakage growth in the faulted generator results in the EAB and LPZ doses remaining within 10% of the 10 CFR 100 values of 25 Rem whole body and 300 Rem thyroid for the accident-initiated iodine spike, and 10 CFR 100 values for the pre-accident iodine spike.

The distribution of crack indications at the tube support plate elevations will be confirmed to result in acceptable primary to secondary leakage during all plant conditions and that radiological consequences are not adversely impacted.

Renewal of the tube support plate elevation plugging criteria for operation at Catawba Unit 1 will decrease the number of tubes which must be repaired by sleeving or taken out of service by plugging. The installation of steam generator tube plugs reduce the RCS flow margin. Thus, implementation of the alternate plugging criteria will maintain the margin of flow that would otherwise be reduced in the event of increased tube plugging.

Based on the above, it is concluded that the proposed license amendment requested does not result in a significant reduction in margin with respect to plant safety as defined in the Final Safety Analysis Report or any Bases of the plant Technical Specifications.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act on a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission takes this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of the **Federal Register** notice. Written comments may also be delivered to Room T–6 D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By March 13, 1995, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Buidling, 2120 L Street, NW., Washington, DC, and at the local public document room located at the York County Library, 138 East Black Street, Rock Hill, South Carolina. If a request for a hearing or petition for leave to intervene is filed by the above date, the

Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Herbert N. Berkow: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated November 29, 1994, as supplemented January 12 and 27, 1995, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the New York County Library, 138 East Black Street, Rock Hill, South Carolina.

Dated at Rockville, Maryland, this 3rd day of February 1995.

For the Nuclear Regulatory Commission.

Robert E. Martin,

Project Manager, Project Directorate II–3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94–3234 Filed 2–8–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–245]

Northeast Nuclear Energy Company; Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Northeast Nuclear Power Company (the licensee) to withdraw its October 15, 1993, application for proposed amendment to Facility Operating License No. DPR–21 for Millstone Nuclear Power Station, Unit 1, located in New London County, Connecticut.

The proposed amendment would have modified the Unit 1 technical specifications to provide a maximum duration that radioactive effluent monitoring instrumentation could be out-of-service for the purpose of maintenance, performance of required tests, checks, calibrations, or sampling before the applicable action statement was entered.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on December 8, 1993 (58 FR 64611). However, by letter dated January 19, 1995, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated October 15, 1993, and the licensee's letter dated January 19, 1995, which withdrew the application for license amendment. The above documents are available for public

inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Learning Resource Center, Three Rivers Community-Technical College, Thames Valley Campus, 574 New London Turnpike, Norwich , CT 06360.

Dated at Rockville, Maryland, this 2nd day of February 1995.

For the Nuclear Regulatory Commission.

James W. Andersen,

Project Manager, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–3235 Filed 2–8–95; 8:45 am]

BILLING CODE 7590–01–M

Public Service Electric and Gas Company; Environmental Assessment and Finding of No Significant Impact

[Docket Nos. 50–272 and 50–311]

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of its regulations to Facility Operating License Nos. DPR–70 and DPR–75, issued to the Public Service Electric and Gas Company, PECO Energy Company, Delmarva Power and Light Company, and Atlantic City Electric Company, licensees for the Salem Nuclear Generating Station, Units 1 and 2. The plants are located at the licensee's site in Salem County, New Jersey. The exemption was requested by the licensee by letter dated December 22, 1994.

Environmental Assessment

Identification of Proposed Action

The proposed action requests an exemption from certain requirements of 10 CFR 50.60, ''Acceptance Criteria for Fracture Prevention Measures for Light-Water Nuclear Power Reactors for Normal Operation,'' to allow application of an alternate methodology to determine the low temperature overpressure protection (LTOP) setpoint for the Salem Nuclear Generating Station, Units 1 and 2. The proposed alternate methodology is consistent with guidelines developed by the American Society of Mechanical Engineers (ASME) Working Group on Operating Plant Criteria (WGOPC) to define pressure limits during LTOP events that avoid certain unnecessary operational restrictions, provide adequate margins against failure of the reactor pressure vessel, and reduce the potential for unnecessary activation of pressure-relieving devices used for LTOP. These guidelines have been incorporated into Code Case N–514, ''Low Temperature Overpressure Protection,'' which has been approved by the ASME Code Committee. The content of this code case has been incorporated into Appendix G of Section XI of the ASME Code and published in the 1993 Addenda to Section XI.

The philosophy used to develop Code Case N–514 guidelines is to ensure that the LTOP limits are still below the pressure/temperature (P/T) limits for normal operation, but allow the pressure that may occur with activation of pressure-relieving devices to exceed the P/T limits, provided acceptable margins are maintained during these events. This philosophy protects the pressure vessel from LTOP events, and still maintains the Technical Specifications P/T limits applicable for normal heatup and cooldown in accordance with Appendix G to 10 CFR Part 50 and Sections III and XI of the ASME Code.

The Need for the Proposed Action

Pursuant to 10 CFR 50.60, all light-water nuclear power reactors must meet the fracture toughness and material surveillance program requirements for the reactor coolant pressure boundary as set forth in Appendices G and H to 10 CFR Part 50. Appendix G to 10 CFR Part 50 defines P/T limits during any condition of normal operation, including anticipated operational occurrences and system hydrostatic tests, to which the pressure boundary may be subjected over its service lifetime. It is specified in 10 CFR 50.60(b) that alternatives to the described requirements in Appendices G and H to 10 CFR Part 50 may be used when an exemption is granted by the Commission under 10 CFR 50.12.

To prevent transients that would produce pressure excursions exceeding the Appendix G P/T limits while the reactor is operating at low temperatures, the licensee installed an LTOP system. The LTOP system includes pressure relieving devices in the form of Power-Operated Relief Valves (PORVs) that are set at a pressure low enough that if a transient occurred while the coolant temperature is below the LTOP enabling temperature, they would prevent the pressure in the reactor vessel from exceeding the Appendix G P/T limits. To prevent these valves from lifting as a result of normal operating pressure surges (e.g., reactor coolant pump starting, and shifting operating charging pumps) with the reactor coolant system in a water solid condition, the operating pressure must be maintained below the PORV setpoint.

In addition, in order to prevent cavitation of a reactor coolant pump, the operator must maintain a differential pressure across the reactor coolant pump seals. Hence, the licensee must operate the plant in a pressure window that is defined as the difference between the minimum required pressure to start a reactor coolant pump and the operating margin to prevent lifting of the PORVs due to normal operating pressure surges. The licensee's current LTOP analysis, which removes the non-conservatism in a previous analysis by assuming one reactor coolant pump in operation, indicates that using the Appendix G safety margin to determine the PORV setpoint would result in a new pressure setpoint within the current operating window of Salem 1 and a new setpoint just outside the current operating window of Salem 2. In both cases, there would be no margin for normal operating pressure surges. Operating with these limits could result in the lifting of the PORVs and cavitation of the reactor coolant pumps during normal operation. Therefore, the licensee proposed that in determining the PORV setpoint for LTOP events for Salem, the allowable pressure be determined using the safety margins developed in an alternate methodology in lieu of the safety margins required by Appendix G to 10 CFR Part 50. The alternate methodology is consistent with ASME Code Case N–514. The content of this code case has been incorporated into Appendix G of Section XI of the ASME Code and published in the 1993 Addenda to Section XI.

An exemption from 10 CFR 50.60 is required to use the alternate methodology for calculating the maximum allowable pressure for LTOP considerations. By application dated December 22, 1994, the licensee requested an exemption from 10 CFR 50.60.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action.

Appendix G of the ASME Code requires that the P/T limits be calculated: (a) using a safety factor of 2 on the principal membrane (pressure) stresses, (b) assuming a flaw at the surface with a depth of one-quarter (¼) of the vessel wall thickness and a length of six (6) times its depth, and (c) using a conservative fracture toughness curve that is based on the lower bound of static, dynamic, and crack arrest fracture toughness tests on material similar to the Salem reactor vessel material.

In determining the PORV setpoint for LTOP events, the licensee proposed to

use safety margins based on an alternate methodology consistent with the proposed ASME Code Case N–514 guidelines. The ASME Code Case N–514 allows determination of the setpoint for LTOP events such that the maximum pressure in the vessel would not exceed 110% of the P/T limits of the existing ASME Appendix G. This results in a safety factor of 1.8 on the principal membrane stresses. All other factors, including assumed flaw size and fracture toughness, remain the same. Although this methodology would reduce the safety factor on the principal membrane stresses, use of the proposed criteria will provide adequate margins of safety to the reactor vessel during LTOP transients.

The change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupation radiation exposure.

Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential non-radiological impacts, the proposed change involves use of more realistic safety margins for determining the PORV setpoint during LTOP events. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed action.

Alternative to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need to be evaluated.

As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are equivalent.

Alternative Use of Resources

This action did not involve the use of any resources not previously considered in the Final Environmental Statements related to operation of the Salem Nuclear Generating Station, dated April 1973.

Agencies and Persons Consulted

The NRC staff consulted with the state of Pennsylvania regarding the environmental impact of the proposed action. The state official had no comments.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for exemption dated December 22, 1994, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC and at the local public document room located at the Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079.

Dated at Rockville, Maryland, this 7th day of February 1995.

For The Nuclear Regulatory Commission.

Chester Poslusny,

Acting Director, Project Directorate I–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–3366 Filed 2–8–95; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–35327; File No. SR–AMEX–94–56]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 to Proposed Rule Change by the American Stock Exchange, Inc., Relating to Buy-Write Options Unitary Derivatives (''BOUNDs'')

February 3, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 12, 1994, the American Stock Exchange, Inc. (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex, pursuant to Rule 19b–4 under the Act, proposes to amend its rules to permit trading in Buy-Write Options Unitary Derivatives (''BOUNDs''). As described in more detail below, BOUNDs are long term options which the Amex believes have the same economic characteristics as a covered call writing strategy. On December 23, 1994, the Exchange submitted Amendment No. 1 (''Amendment No. 1'') to the filing to provide that BOUNDs will be listed with a maximum expiration date corresponding to the longest prescribed long term equity options (''LEAPs'') then available for trading, which is currently 39 months.[1]

The text of the proposed rule change and Amendment No. 1 are available at the Office of the Secretary, Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

In 1986, the Exchange began listing 26 unit investment trusts, each of which held shares of a single ''blue-chip'' equity security. Investors were offered an opportunity to separate their ownership interests in these trusts into two distinct trading components representing different economic characteristics of the individual stocks held in the trusts. These separate trading components were known as PRIMEs and SCOREs.

[1] Letter from William Floyd-Jones, Jr., Assistant General Counsel, Amex, to Michael Walinskas, Derivative Products Regulation, SEC, dated Dec. 23, 1994. The Amex originally proposed listing BOUNDs with 60 month expirations and extending the maximum duration of LEAPs from 39 months to 60 months.

PRIMEs were the enhanced income/limited capital gain component. The holder of a PRIME retained the dividends on the stock held by the trust and participated in the underlying stock's appreciation up to a fixed dollar amount. SCOREs were the capital appreciation component. The holder of a SCORE had the right to all capital appreciation above a fixed dollar amount, but did not receive the dividends on the underlying stock.

PRIMEs and SCOREs were extremely popular with investors, but the trusts from which they derived have now reached their five-year termination dates. Certain Internal Revenue Service regulations, moreover, effectively preclude the creation of new PRIMEs and SCOREs through the original trust mechanism.

The Exchange, for some time, has sought a replacement for the expired PRIMEs and SCOREs. During this process, the Exchange and other options exchanges began to list and trade LEAPs. Like SCOREs, LEAPs enable investors to receive the benefits of a stock's price appreciation above a fixed dollar amount over a long period of time. Currently, however, there is no generally available replacement for PRIMEs.

The Exchange, accordingly, proposes to list BOUNDs as a replacement for PRIMEs. The Options Clearing Corporation (''OCC'') will be the issuer of all BOUNDs traded on the Exchange. As with all OCC issued options, BOUNDs will be created when an opening buy and an opening sell order are executed. The execution of such orders will increase the open interest in BOUNDs. Except as described herein, BOUNDs will be subject to the rules governing standardized options.

The Exchange anticipates listing BOUNDs with respect to those underlying securities that have listed LEAPs. The criteria for stocks underlying BOUNDs will be the same as the criteria for stocks underlying LEAPs.

It is anticipated that the sum of the market prices of a LEAP and a BOUND on the same underlying stock with the same expiration and exercise price will closely approximate the market price for the underlying stock. If the combined price of the LEAP and BOUND diverge from that of the underlying common stock, there will be an arbitrage opportunity which, when executed, should bring the price relationships back into line.

BOUNDs will have the same strike prices and expiration dates as their respective LEAPs except that the Exchange will list only a strike price that is at or very close to the price of the underlying stock at the time of listing, or that is below the price of the stock at that time. For example, at the time of initial listing, the strike prices for a BOUND with the underlying stock trading at $50 per share, would be set at $40 and $50. The Exchange would not list a BOUND with a strike price of $60 in this example.

The Exchange anticipates that it will list new complementary LEAPs and BOUNDs on the same underlying securities annually, or at more frequent intervals, depending on market demand. The Exchange has the current authority to list LEAPs with up to 39 months until expiration and, therefore, seeks to introduce BOUNDs with up to the same 39 month duration.[2]

Like PRIMEs, BOUNDs will offer essentially the same economic characteristics as covered calls with the added benefits that BOUNDs can be traded in a single transaction and are not subject to early exercise. BOUND holders will profit from appreciation in the underlying stock's price up to the strike price and will receive payments equivalent to any cash dividends declared on the underlying stock. On the ex-dividend date for the underlying stock, OCC will debit all accounts with short positions in BOUNDs and credit all accounts with long positions in BOUNDs with an amount equal to the cash dividend on the underlying stock.

Like regular options, BOUNDs will trade in standardized contract units of 100 shares of underlying stock per BOUND so that at expiration, BOUND holders will receive 100 shares of the underlying stock for each BOUND contract held if, on the last day of trading, the underlying stock closes at or below the strike price. However, if at expiration the underlying stock closes above the strike price, the BOUND contract holder will receive a payment equal to 100 times the BOUND's strike price for each BOUND contract held. BOUND writers will be required to deliver either 100 shares of the underlying stock for each BOUND contract or the strike price multiplied by 100 at expiration, depending on the price of the underlying stock at that time. This settlement design is similar to the economic result that accrues to an investor who has purchased a covered call (*i.e.*, long stock, short call) and held that position to the expiration of the call option.

For example, if the XYZ BOUND has a strike price of $50 and XYZ stock closes at $50 or less at expiration, the holder of the XYZ BOUND contract will receive 100 shares of XYZ stock. This is the same result as if the call option in a buy—write position had expired out of the money; i.e., the option would expire worthless and the writer would retain the underlying stock. If XYZ closes above $50 per share, then the holder of an XYZ BOUND will receive $5,000 in cash (100 times the $50 strike price). This mimics the economic result to the covered call writer when the call expires in the money, i.e., the writer would receive an amount equal to 100 shares times the strike price and would forfeit any appreciation above that price (because the stock would be delivered to satisfy the settlement obligations created upon the exercise of the call option).

The settlement mechanism for the BOUNDs will operate in conjunction with that of LEAP calls. For example, if at expiration the underlying stock closes at or below the strike price, the LEAP call will expire worthless, and the holder of a BOUND contract will receive 100 shares of stock from the short BOUND. If on the other hand, the LEAP call is in the money at expiration, the holder of the LEAP call is entitled to 100 shares of stock from a short LEAP upon payment of the strike price, and the holder of a BOUND contract is entitled to the cash equivalent of the strike price times 100 from the short BOUND. An investor long both a LEAP and a BOUND, where XYZ closes above the $50 strike price at expiration, would be entitled to receive $5,000 in cash from the short BOUND and, upon exercise of the LEAP, would be obligated to pay $5,000 to receive 100 shares of XYZ stock.

An investor long the underlying stock, and who writes both a LEAP and a BOUND, will be obligated to deliver the stock to the long LEAP call if the underlying stock closes above the strike price, and will receive in return payment of the strike price times 100, which amount will then be delivered to the long BOUND. Accordingly, the Exchange believes a covered writer's position is effectively closed upon the delivery of the underlying stock. If a writer of both instruments has deposited cash or securities other than the underlying stock as margin for a short LEAP call and BOUND, then the writer delivers 100 shares of stock (purchased on the open market) to the long LEAP call upon payment of the strike price times 100. The writer of the BOUND then delivers the cash value of 100 times the strike price to the holder of the long BOUND.

It should be noted that LEAPs are American-style options whereas

[2] See Amendment No. 1.

BOUNDs are European-style.[3] The Exchange believes that it would be inappropriate for the BOUND holder to have an American-style exercise right since the BOUND will tend to trade at a discount to the stock and strike price.

Sales Practices. BOUNDs will be subject to the Exchange's sales practice and suitability rules applicable to standardized options.

Adjustments. BOUNDs will be subject to adjustments for corporate and other actions in accordance with the rules of OCC.

Position Limits. BOUNDs will be subject to the position limits for equity options set forth in Exchange Rule 904. In addition, BOUNDs will be aggregated with other equity options on the same underlying stock for purposes of calculating position limits. According to the Exchange, since a BOUND to the holder is a bullish position (i.e., the equivalent of a short put position where the strike price has been prepaid), the Exchange proposes that long BOUNDs be aggregated with long call and short put positions in the related equity options. Similarly, since the Exchange believes the BOUND, from the perspective of the seller, is a ''bearish'' position (i.e., it is the equivalent of a long put position where the strike price has been prepaid), it proposes to aggregate short BOUNDs with short call and long put positions in the related equity options.

Customer Margin. The Exchange proposes to apply options margin treatment to BOUNDs as follows:

1. *Long BOUND Positions:* full payment required at the time of purchase. As described more fully below, however, there will be a credit for long BOUNDs in BOUND spread positions.

2. *Short BOUND Positions:* the BOUND seller receives full value of the BOUND at the time of the initial sale and receives no further payment when the contract is settled either by payment of the strike price or delivery of the underlying stock. Short BOUND positions, therefore, will be margined in an amount equal to the current market price of the BOUND plus an amount equal to an ''add-on'' used to margin short call options times the market value of the BOUND. Since the maximum obligation of the seller of a BOUND cannot exceed the strike price, however, the amount of margin will never exceed the strike value. For example:

A. Assume a stock rice of $50, an exercise price of $50, a margin add-on percent of 20% and the BOUND trading at $40. In this case, the short seller would have to pay $48 to margin the position, i.e., $40 BOUND price plus 20% of $40.

B. Assume a stock price of $40, an exercise price of $50, a margin add-on percent of 20% and the BOUND trading at $35. In this case, the margin would be $42, i.e., $35 BOUND price plus 20% of $35.

3. *Covered Positions:* Short BOUND positions offset by the equivalent number of shares of the underlying stock will not require any additional margin since the seller's obligation to the buyer will, in all cases, be covered by the position in the underlying stock. Further, since the sum of the prices of a LEAP and a BOUND will be approximately equal to the price of the underlying stock, a long stock position is cover for both a short BOUND and a short LEAP position.

4. *Spread Positions.* (i) *Same Expiration—Different Strike Prices:* There will be no margin requirement for BOUND positions which are long the higher strike price and short the lower strike price since the long BOUND more than covers the obligation of the short side of the position. For positions short the higher strike price and long the lower strike, a customer will be required to post the difference between the strike prices.

(ii) *Different Expiration—Same Strike Price:* No margin will be required for positions long the nearest expiration and short the longer expiration since the value of the long BOUND will cover the obligation on the short leg of the position. Positions that are short the near expiration and long the distant expiration will require full margin on the short position less 80% of the market value of the long position.

(iii) *Different Expiration—Different Strike Prices:* There will be no margin required for positions that are long the near expiration and short the distant expiration when the strike price on the near expiration is higher than the strike on the distant expiration. For positions which are long the near expiration and short the distant expiration where the strike price on the near expiration is lower than the strike on the distant contract, the margin will be the difference in the strike between the near term and distant strikes. For positions which are short the near expiration and long the distant expiration, full margin will be required on the short position less 80% of the market value of the long position.

(2) Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and furthers the objectives of section 6(b)(5), in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and the national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Amex believes that the proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be

[3] A European-style option may only be exercised during a limited period of time before the option expires. An American-style option may be exercised at any time prior to its expiration.

available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by March 2, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–3280 Filed 2–8–95; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 20880; 811–7304]

Brookhollow Trust; Application for Deregistration

February 3, 1995.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: Brookhollow Trust.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATES: The application on Form N–8F was filed on October 28, 1994, and amended on January 13, 1995, and January 27, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 28, 1995, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, D.C. 20549. Applicant, 6 St. James Avenue, Boston, Massachusetts 02116.

FOR FURTHER INFORMATION CONTACT: James J. Dwyer, Staff Attorney, at (202) 942–0581, or C. David Messman, Branch Chief, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a Massachusetts business trust and a diversified open-end management investment company. On October 19, 1992, applicant filed a notification of registration on Form N–8A to register as an investment company under section 8(a) of the Act. On November 20, 1992, applicant filed a registration statement on Form N–1A under section 8(b) of the Act and under the Securities Act of 1933 to register an indefinite number of shares.

2. Applicant's registration statement was declared effective on May 7, 1993. The registration statement initially pertained only to applicant's Brookhollow Treasury Money Market Fund series. No public offering or sales of securities of such series were made.

3. An amendment to applicant's registration statement pertaining to the Brookhollow Short Duration U.S. Government Fund (''Short Duration Fund'') series was declared effective on March 3, 1993. The public offering of the shares of such series commenced on April 2, 1993. No sales of such shares were completed.

4. On October 1, 1993, pursuant to an action by unanimous written consent, applicant's board of trustees adopted resolutions appoving applicant's liquidation. On October 29, 1993, applicant had outstanding 10,168.813 shares of beneficial interest of Short Duration Fund, with a net asset value of $9.93 per share and an aggregate net asset value of $100,977.79, which amount applicant distributed on that date to its sole securityholder of record (the seed capital investor).

5. Legal, accounting, printing, mailing, deregistration, termination, and other expenses incurred in connection with applicant's liquidation, totalling approximately $17,412, were paid by Signature Financial Group, Inc. (''Signature''). EBC Distributors, Inc., applicant's principal underwriter, is a wholly-owned subsidiary of Signature.

6. At the time of the application, applicant had no securityholders, assets, or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not presently engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

7. Applicant intends to make all legally required filings with the Massachusetts Secretary of State to terminate applicant.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–3281 Filed 2–8–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–26228]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

February 3, 1995.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by February 27, 1995, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

The Columbia Gas System, Inc., et al.

The Columbia Gas System, Inc. (''Columbia''), a registered holding company, and its nonutility subsidiary company, Columbia LNG Corporation (''Columbia LNG''), both of 20 Montchanin Road, Wilmington, Delaware 19807, have filed a post-effective amendment to their application-declaration previously filed under sections 6(a), 7, 9(a), 10, 12(b) and

[4] 17 CFR 200.30–3(a)(12) (1994).

12(c) of the Act and Rules 42, 43, 45, 46 and 51 thereunder.

By Commission order dated February 25, 1994 (HCAR 25993), Columbia and Columbia LNG were authorized through December 31, 1994 to proceed with a recpitalization of Columbia LNG to establish a 100% equity capital structure. To effect this recapitalization, Columbia and Columbia LNG were authorized to have Columbia make a capital contribution to Columbia LNG of up to $52.0 million, consisting of $48.1 million of installment promissory notes and short-term debt and up to $3.9 million of accrued interest to the effective date of the recapitalization, which was estimated to be mid-1994.

On December 21, 1994, Columbia and Columbia LNG proceeded with the recapitalization by having Columbia make a capital contribution of $52.0 million as described above. However, because the recapitalization was undertaken later than expected due to delays at the Federal Energy Regulatory Commission in receiving satisfactory certificates authorizing Columbia LNG's new business plan, the amount of accrued interest to the effective date of the recapitalization exceeded the $3.9 million authorized by $875,758.

Columbia and Columbia LNG state that the intent of the application-declaration originally filed with the Commission was to obtain authorization to contribute all of the outstanding debt and accrued interest so as to establish a 100% equity capital structure for Columbia LNG. Columbia now proposes to make an additional capital contribution to Columbia LNG which would consist of the remaining accrued interest.

Columbia Gas System, Inc., et al. (70–8471)

Columbia Gas System, Inc. (''Columbia''), a registered holding company, seventeen wholly-owned distribution, transmission, exploration and development, and other subsidiary companies,[1] all of which are engaged in the natural gas business, and twelve subsidiary companies of TriStar Ventures (''TriStar Ventures Subsidiaries''),[2] have filed a post-effective amendment under Sections 6, 7, 9(a), 10, 12(b), 12(c), and 12(f) of the Act and Rules 42, 43, 45, and 46 thereunder.

By order dated December 22, 1994 (HCAR No. 26201) (''Order''), Columbia, and fourteen of the subsidiary companies (''Subsidiaries''),[3] were authorized to recapitalize Columbia Gulf, Columbia Development, and Columbia Coal, to implement the 1995 and 1996 Long-Term and Short-Term Financing Programs of the Subsidiaries, and to continue the Intrasystem Money Pool (''Money Pool'') through 1996.

The applicants now seek Commission authorization for the twelve TriStar Ventures Subsidiaries to invest in, but not to borrow from, the Money Pool.

The Order provided that sources of funds for the Subsidiaries will include their internal cash flow and Money Pool borrowings. The Order stated that no external sources are projected to be needed to fund their 1995 and 1996 financing programs while Columbia remains in bankruptcy.

The Order contemplated that the Subsidiaries finance part of their capital expenditure programs with funds generated from internal sources and through short-term borrowings from the Money Pool, to the extent Columbia subsidiaries have temporary excess funds. The Order authorized the Subsidiaries to borrow short-term funds from the Money Pool in amounts specified therein.

Under the Order, advances from the Money Pool will be limited to a maximum amount outstanding at any one time from January 1, 1995 through December 31, 1996. The Order authorized the Money Pool to be continued through December 31, 1996. It provided for all short-term borrowing to be through the Money Pool, with the Service Corporation as agent. It stipulated that Columbia may invest in the Money Pool but will not borrow from the Money Pool.

The Order contemplated that when Columbia and the subsidiaries generate cash in excess of their immediate cash requirements, such temporary excess cash may be invested in the Money Pool. Columbia and investing subsidiaries would be investors (''Investors'') pursuant to a Money Pool evidence of a deposit. Loans to the Subsidiaries (''Borrowers'') through the Money Pool will be made pursuant to a short-term grid note. Such short-term grid notes will be due upon demand by the Investors but not later than April 30, 1997. The loans will be allocated to the Investors based on the proportion of their relative investment in the Money Pool.

The Order also contemplated that the cost of money on all short-term advances from, and the investment rate for funds invested in, the Money Pool will be the interest rate per annum equal to its weighted average short-term investment rate. Should there be no Money Pool investments, the cost of money will be the average Federal Funds rate for the prior month published in the Federal Reserve Statistical Release. A default rate equal to 2% per annum above the pre-default rate on unpaid principal or interest amounts will be assessed if any interest or principal payment becomes past due.

The Southern Company, et al. (70–8563)

The Southern Company (''Southern''), a registered holding company, and The Southern Development and Investment Group, Inc. (''Development''), wholly owned nonutility subsidiary of Southern, both of 64 Perimeter Center East, Atlanta, Georgia 30346, have filed an application-declaration under sections 9(a), 10 and 12(b) of the Act and rules 45 and 54 thereunder.

Development proposes to invest up to $5 million from time to time through December 31, 2002 to acquire an interest as a limited partner in EnviroTech Investment Fund I Limited Partnership,

[1] Columbia Gas of Pennsylvania, Inc. (''Columbia Pennsylvania''), 200 Civic Center Drive, Columbus, Ohio 43215; Columbia Gas of Ohio, Inc. (''Columbia Ohio''), 200 Civic Center Drive, Columbus, Ohio 43215; Columbia Gas of Maryland, Inc. (''Columbia Maryland''), 200 Civic Center Drive, Columbus, Ohio 43215; Columbia Gas of Kentucky, Inc. (''Columbia Kentucky''), 200 Civic Center Drive, Columbus, Ohio 43215; Commonwealth Gas Services, Inc. (''Commonwealth Services''), 200 Civic Center Drive, Columbus, Ohio 43215; Columbia Gulf Transmission Co. (''Columbia Gulf''), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314; Columbia Gas Development Corp. (''Columbia Development''), One Riverway, Houston, Texas 77056; Columbia Natural Resources, Inc. (''Columbia Resources''), 900 Pennsylvania Avenue, Charleston, West Virginia 25302; Columbia Coal Gasification Corp. (''Columbia Coal''), 900 Pennsylvania Avenue, Charleston, West Virginia 25302; Columbia Energy Services Corp. (''Columbia Services''), 2581 Washington Road, Upper Saint Clair, Pennsylvania 15241; Columbia Gas System Service Corp. (''Service Corporation''), 20 Monchanin Road, Wilmington, Delaware 19807; Columbia Propane Corp. (''Columbia Propane''), 800 Moorefield Park Drive, Richmond, Virginia 23236; Commonwealth Propane, Inc. (''Commonwealth Propane''), 800 Moorefield Park Drive, Richmond, Virginia 23236; TriStar Ventures Corp. (''TriStar Ventures''), 20 Monchanin Road, Wilmington, Delaware 19807; TriStar Capital Corp. (''TriStar Capital''), 20 Monchanin Road, Wilmington, Delaware 19807; Columbia Atlantic Trading Corp. (''Columbia Atlantic''), 20 Monchanin Road, Wilmington, Delaware 19807; and Columbia LNG Corp. (''Columbia LNG''), 20 Monchanin Road, Wilmington, Delaware 19807.

[2] TriStar Pedrick Limited Corporation, TriStar Pedrick General Corporation, TriStar Binghamton Limited Corporation, TriStar Binghamton General Corporation, TriStar Vineland Limited Corporation, TriStar Vineland General Corporation, TriStar Rumford Limited Corporation, TriStar Georgetown General Corporation, TriStar Georgetown Limited Corporation, TriStar Fuel Cells Corporation, TVC Nine Corporation, and TVC Ten Corporation, all of 20 Monchanin Road, Wilmington, Delaware 19807.

[3] Columbia Pennsylvania, Columbia Ohio, Columbia Maryland, Columbia Kentucky, Commonwealth Services, Columbia Gulf, Columbia Development, Columbia Resources, Columbia Coal, Service Corporation, Columbia Propane, Commonwealth Propane, TriStar Capital, and Columbia Atlantic.

a Delaware partnership (''EnviroTech Partnership''). The interest to be acquired by Development will represent not more than 9.9% of the interests of all limited partners of the EnviroTech Partnership. The sole general partner of the EnviroTech Partnership (''General Partner'') will be Advent International Limited Partnership, a Delaware limited partnership, of which Advent International Corporation (''AIC'') is the general partner. AIC is a venture capital investment firm.

In addition, Southern proposes to provide the funds needed by Development in order to acquire the interests in the EnviroTech Partnership. Such funds will be advanced to Development as cash capital contributions as and when contributions by the limited partners are called by the General Partner in accordance with the terms of the partnership agreement.

A key objective of the EnviroTech Partnership is to make investments in companies (each a ''Portfolio Company'') that will contribute to the reduction, avoidance or sequestering of greenhouse gas emissions; help utilities and their customers handle waste by-products more effectively or produce or manufacture goods or services more cost effectively; improve the efficiency of the production, storage, transmission, and delivery of energy; and provide investors with attractive opportunities relating to the evolving utility business climate which meet the above objectives.

In selecting suitable investments, the EnviroTech Partnership will focus on the following technology sectors, among others: Alternate and renewable energy technologies; environmental and waste treatment technologies and services; energy efficiency technologies, processes and services; electrotechnologies used in the reduction of medical waste; technologies and processes promoting alternative energy for transportation; and other technologies related to improving the generation, transmission and delivery of electricity.

The term of the EnviroTech Partnership is 10 years from the date of the partnership agreement, subject to extension for up to two years upon agreement of the General Partner and limited partners holding 66⅔ percent of the combined capital contributions of all limited partners. Subject to certain limitations set forth in the partnership agreement, the management, operation, and implementation of policy of the EnviroTech Partnership will be vested exclusively in the General Partner. Among other powers, the General Partner will have discretion to invest the partnership's funds in accordance with investment guidelines. The investment guidelines may be amended or modified only upon the affirmative vote of limited partners representing at least 75% of the commitments of all limited partners.

Under the terms of the partnership agreement the General Partner will be paid an annual management fee equal to 2½ percent of the total amount of the capital commitments of the partners through the first six years, thereafter declining by ¼ of 1% on each anniversary to 1.5% commencing on the ninth anniversary date. In addition, the General Partner shall be entitled to reimbursement for all reasonable expenses incurred in the organization of the EnviroTech Partnership up to $195,000, and for other third party expenses incurred on behalf of the EnviroTech Partnership.

All EnviroTech Partnership income and losses (including income and losses deemed to have been realized when securities are distributed in kind) will generally be allocated 80% to and among the limited partners and 20% to the General Partner. All cash distributions to the partners shall be made first to the limited partners until such time as the limited partners shall have received aggregate distributions equal to the aggregate of their respective capital contributions, and thereafter 20% to the General Partner and 80% to the limited partners. Distributions in kind of the securities of Portfolio Companies that are listed on or otherwise traded in a recognized over-the-counter or unlisted securities market may be made at the option of the General Partner.

The partnership agreement also provides that in the event it is likely that an investment by the EnviroTech Partnership would cause a limited partner (''Conflicted Partner'') to violate, among other things, any law or regulation, under certain circumstances other limited partners (each, a ''Purchasing Partner'') may purchase from the Conflicted Partner a proportionate interest in such an investment by delivering to the Conflicted Partner a note in the principal amount of the Conflicted Partner's capital contributions attributable to the portion of such interest in the investment being purchased. Such note will be non-recourse to the Purchasing Partner and will bear interest at a rate equal to 200 basis points over comparable U.S. Treasury obligations having a five year maturity, such interest and principal being payable only to the extent that the Purchasing Partner receives distributions or payments attributable to the interest purchased.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–3282 Filed 2–8–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–20879; 812–9238]

Van Kampen Merritt Equity Opportunity Trust, Series 7, et al.; Notice of Application

February 3, 1995.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (''Act'').

APPLICANTS: Van Kampen Merritt Equity Opportunity Trust, Series 7 and Van Kampen Merritt, Inc. (the ''Sponsor'').

RELEVANT ACT SECTIONS: Order requested under sections 11(a) and 11(c).

SUMMARY OF APPLICATION: Van Kampen Merritt Equity Opportunity Trust, Series 7 and certain Subsequent Series (the ''Rollover Trust'') and the Sponsor seek an order permitting certain offers to exchange units of terminating series of the Rollover Trust for units of subsequently offered series of the Rollover Trust.

FILING DATES: The application was filed on September 22, 1994, and an amendment thereto was filed on January 25, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 28, 1995, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reasons for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants: One Parkview Plaza, Oakrook Terrace, Illinois 60181.

FOR FURTHER INFORMATION CONTACT: H.R. Hallock, Jr., Special Counsel, at (202) 942–0564 or Barry D. Miller,

Senior Special Counsel, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. The Rollover Trust will consist of a registered unit investment trust having multiple series, each of which will be similar but separate and designated by a different name and/or series number.[1] Each series for which exemptive relief is being sought will have the characteristics described below (the ''Trust Series''). Each Trust Series will pursue an investment objective that is consistent with a specified investment philosophy. The Sponsor will serve as the sponsor and depositor for each such Trust Series.

2. The first Trust Series of the Rollover Trust will contain the Strategic Ten Trust—United States Portfolio, United Kingdom Portfolio and Hong Kong Portfolio. Its objective will be to provide an above-average total return derived from dividend income and capital appreciation by investing in common stocks (the ''Equity Securities'') of ten companies in the Dow Jones Industrial Average, the Financial Times Industrial Ordinary Share Index and the Hang Seng Index, respectively, having the highest dividend yield as of the day prior to the initial date of deposit for such Trust Series. Future series of the Rollover Trust may be similar to the first Trust Series or may consist of Trust Series with a different investment philosophy, a different number of common stocks or a different duration.

3. The Sponsor will be permitted to deposit additional Equity Securities in a Trust Series subsequent to the initial date of deposit. Any such deposit will result in a corresponding increase in the number of units of such Trust Series outstanding. Such units will be continuously offered for sale to the public by means of the prospectus. The Sponsor anticipates that any additional Equity Securities deposited in the Trust Series in connection with the sale of additional units will maintain, as nearly as is practicable, the original proportionate relationship among the Equity Securities in the Trust Series as of the original date of deposit of such Trust Series. Although not obligated to do so, the Sponsor intends to maintain a secondary market for the units of each Trust Series.

4. Each Trust Series will terminate on a date (the ''Mandatory Termination Date'') which is a specified term (*e.g.*, one, three or five years) after the initial date of deposit for such Trust Series. Commencing on the Mandatory Termination Date, Equity Securities will be sold in connection with termination of the Trust Series. The Sponsor will determine the manner, timing and execution of the sale of the Equity Securities. A specified number of days prior to the Mandatory Termination Date of the Trust, the trustee will provide notice thereof to all unitholders.

5. Absent another election, unitholders will receive a cash distribution evidencing their *pro rata* share of the proceeds from the liquidation of the Equity Securities in the Trust Series. Unitholders who own at least a specified number of units of a Trust Series (*e.g.*, 2,500 units) may elect to receive a distribution of Equity Securities in connection with the termination of the Trust Series.

6. Alternatively, unitholders may elect to have all of their units redeemed in kind on a predetermined date which is prior to the Mandatory Termination Date, and to have the distributed Equity Securities sold by the trustee. The proceeds of such sale will be reinvested in the units of a new Trust Series (the ''Reinvestment Trust Series''), if one is then being offered, at a reduced sales charge. (The option of unitholders to make such election is referred to as the ''Rollover Option,'' and unitholders making such election are referred to as ''Rollover Unitholders''.) The portfolio of the Reinvestment Trust Series will contain a specified number of common stocks selected by the Sponsor pursuant to the same investment philosophy which was followed in selecting the common stocks in the terminating Trust Series. The number of common stocks in the Reinvestment Trust Series and the approximate duration of the Reinvestment Trust Series will be the same as those of the terminating Trust Series.

7. The applicable sales charge upon the initial investment in the Rollover Trust will not exceed 3.5% of the public offering price. The reduced sales charge applicable to Rollover Unitholders will be no more than 2.0% of the public offering price.

Applicants' Legal Analysis

1. Section 11(a) requires SEC approval of an offer to exchange securities between open-end investment companies if the exchange occurs on any basis other than the relative net asset values of the securities to be exchanged. Section 11(c) makes section 11(a) applicable to any type of exchange offer of securities of registered unit investment trusts for the securities of any other investment company, irrespective of the basis of exchange. Applicants seek an order pursuant to sections 11(a) and 11(c) of the Act permitting them to offer the Rollover Option in connection with the Trust Series described above to the extent such option is deemed to be an offer of exchange under section 11 of the Act.

2. Applicants state that, in the absence of the Rollover Option, a unitholder of a terminating Trust Series would have to pay the full sales charge in connection with the investment in the Reinvestment Trust Series or in some other investment vehicle. Pursuant to the Rollover Option, however, the Sponsor will offer unitholders of a Trust Series which is currently terminating the opportunity to invest in a Reinvestment Trust Series at a reduced sales charge. Through the exercise of the Rollover Option, investors will be able to decrease their proportionate sales charge burden while remaining invested in a portfolio of common stocks selected pursuant to a particular investment philosophy, determined on a relatively current basis.

3. Applicants state that unitholders of Rollover Trusts will not be induced or encouraged to participate in the Rollover Option through an active advertising or sales campaign. The Sponsor recognizes its responsibility to its customers against generating excessive commissions through churning and claims that the sales charge collected will not be a significant economic incentive to salesmen to promote inappropriately the Rollover Option.

4. On the basis of the foregoing, and subject to the conditions set forth below, Applicants submit that the Rollover Option is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicants' Conditions

If the requested exemption from section 11 is granted, Applicants agree to the following conditions:

1. Whenever the Rollover Option is to be terminated or its terms are to be amended materially, any holder of a security subject to that privilege will be given prominent notice of the impending termination or amendment at least 60 days prior to the date of

[1] Van Kampen Merritt Equity Opportunity Trust has been included in the Registration of Investors Corporate Income Trust, a taxable trust, on Form N–8B–2, File No. 811–2754.

termination or the effective date of the amendment, provided that:

(a) No such notice need to be given if the only material effect of an amendment is to reduce or eliminate the sales charge payable at the time of a rollover; and

(b) No notice need to be given if, under extraordinary circumstances, either—

(i) There is a suspension of the redemption of units of the Rollover Trust under section 22(e) of the Act and the rules and regulations thereunder, or

(ii) A Reinvestment Trust Series temporarily delays or ceases the sale of its units because it is unable to invest amounts effectively in accordance with applicable investment objectives, policies and restrictions.

2. The sales charge collected at the time of any rollover shall not exceed 2.0% of the public offering price of the unit being acquired on each rollover.

3. The prospectus of each Reinvestment Trust Series and any sales literature or advertising that mentions the existence of the Rollover Option will disclose that the Rollover Option is subject to modification, termination or suspension.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–3283 Filed 2–8–95; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Notice of order Adjusting the Standard Foreign Fare Level Index

[Docket 37554]

Section 41509(e) of Title 49 of the United States Code requires that the Department, as successor to the Civil Aeronautics Board, establish a Standard Foreign Fare Level (SFFL) by adjusting the SFFL base periodically by percentage changes in actual operating costs per available seat-mile (ASM). Order 80–2–69 established the first interim SFFL, and Order 94–12–15 established the currently effective two-month SFFL applicable through January 31, 1995.

In establishing the SFFL for the two-month period beginning February 1, 1995, we have projected non-fuel costs based on the year ended September 30, 1994 data, and have determined fuel prices on the basis of the latest available experienced monthly fuel cost levels as reported to the Department.

By Order 95–2–9 fares may be increased by the following adjustment factors over the October 1979 level:

Atlantic	1.3924
Latin America	1.4213
Pacific	1.7999
Canada	1.5129

For further information contact: Keith A. Shangraw (202) 366–2439.

By the Department of Transportation: February 3, 1995

Patrick V. Murphy,

Acting Assistant Secretary for Aviation and International Affairs.

[FR Doc. 95–3223 Filed 2–8–95; 8:45 am]

BILLING CODE 4910–62–P

Notice of Order Adjusting International Cargo Rate Flexibility Level

Policy Statement PS–109, implemented by Regulation ER–1322 of the Civil Aeronautics Board and adopted by the Department, established geographic zones of cargo pricing flexibility within which certain cargo rate tariffs filed by carriers would be subject to suspension only in extraordinary circumstances.

The Standard Foreign Rate Level (SFRL) for a particular market is the rate in effect on April 1, 1982, adjusted for the cost experience of the carriers in the applicable ratemaking entity. The first adjustment was effective April 1, 1983. By Order 94–12–16, the Department established the currently effective SFRL adjustments.

In establishing the SFRL for the two-month period beginning February 1, 1995, we have projected non-fuel costs based on the year ended September 30, 1994 data, and have determined fuel prices on the basis of the latest available experienced monthly fuel cost levels as reported to the Department.

By Order 95–2–8 cargo rates may be adjusted by the following adjustment factors over the April 1, 1982 level:

Atlantic	1.1709
Western Hemisphere	1.1160
Pacific	1.3994

For further information contact: Keith A. Shangraw (202) 366–2439.

By the Department of Transportation: Dated: February 3, 1995.

Patrick V. Murphy,

Acting Assistant Secretary for Aviation and International Affairs.

[FR Doc. 95–3222 Filed 2–8–95; 8:45 am]

BILLING CODE 4910–62–P

National Highway Traffic Safety Administration

Denial of Petition

This notice sets forth the reasons for the denial of a petition submitted to the National Highway Traffic Safety Administration (NHTSA) under 49 U.S.C. § 30162 (formerly section 124 of the National Traffic and Motor Vehicle Safety Act of 1966, as amended).

By letter dated July 8, 1994, Mr. Kurt B. Chadwell petitioned NHTSA to reopen its closed defect investigation (Engineering Analysis, EA92–030) of power steering fluid leakage and resulting engine compartment fires in 1988 through 1990 Ford Taurus, Mercury Sable, and Lincoln Continental vehicles equipped with 3.8 liter engines. The petition also asked the NHTSA take all actions necessary to compel the Ford Motor Company (Ford) to initiate a safety recall of the 429,000 subject vehicles to remedy the alleged defect. By letter dated September 14, 1994, Mr. Chadwell provided additional information. By letter dated November 9, 1994, Mr. Chadwell requested that the investigation be expanded to include Taurus and Sable vehicles equipped with 2.5 liter and 3.0 liter engines.

The following are principal elements of the subject petition:

- The petitioner takes issue with NHTSA's decision to close the original investigation in October 1993.
- The petitioner states that Ford has followed an organizational practice of under-reporting to NHTSA the numbers of known failure incidents in this as well as in other investigations.
- The petitioner provides a document maintained by the U.S. Fire Administration in its National Fire Incident Reporting System (NFIRS), which lists engine compartment fires in Taurus, Sable, and Lincoln Continental vehicles equipped with 2.5 liter, 3.0 liter, and 3.8 liter engines. These data are presented as the basis for the petitioner's request that the investigation be expanded to include those vehicles with 2.5 liter and 3.0 liter engines.

In support of his claims, the petitioner discusses information taken from NHTSA's public record concerning EA92–030, other defect investigations, and other issues regarding compliance with Federal motor vehicle safety standards. In addition, he cites his personal experience as a former employee of Ford.

Regarding the specific petition elements as outlined above, the first represents a basic disagreement with NHTSA's conclusion in closing EA92–

030. The EA closing report clearly states that ''the evidence does not support a conclusion that a safety defect exists'' and that ''it does not appear that further investigation would result in an enforceable defect finding.'' NHTSA finds no information in the subject petition that demonstrates that these conclusions should be withdrawn or modified.

Petitioner's September 14, 1994, submission entitled ''Supplemental Information Relevant to Safety Recall Petition'' questions the accuracy of the number of incidents (230) reported by Ford to NHTSA during the pendency of EA92–030, in part on the basis of numbers of power steering system parts sales reported in the EA Closing Report, and in part on the basis of alleged under-reporting by Ford with respect to another ODI investigation (EA93–033). These allegations appear to be speculative, and seem to be based solely on petitioner's opinions, inferences, beliefs, and grossly unscientific extrapolations of data that, in and of themselves, are questionable. In the absence of factual and reliable information, NHTSA views these allegations of under-reporting by Ford to be without substance.

The data from the NFIRS listing does not provide compelling evidence that NHTSA should expand its investigation of this matter. While the incidents listed are identified as engine compartment fires, there is no evidence that the leakage and ignition of power steering fluid was in any way the cause of these incidents. On the contrary, NHTSA finds no apparent source of ignition of any such fluid that may leak in those vehicles equipped with 2.5 liter or 3.0 liter engines. Analyses of the NFIRS data discloses that the 3.0 liter models of the subject vehicles have experienced a relatively low engine compartment fire incidence, for all causes. In the case of the relatively small population of vehicles equipped with 2.5 liter engines, the incidence of engine compartment fires does appear to be high. The absence of an apparent source of ignition for power steering fluid that may leak, however, indicates that other failures or malfunctions are more likely to be the cause of the fires. On this basis, even if NHTSA were to consider this matter as a potential issue for investigation, it would be a separate investigation unrelated to the prior investigation of power steering fluid-fed fires in vehicles with 3.8 liter engines.

The petition fails to present any substantive, significant, or new information of NHTSA's consideration regarding the request to reopen EA92–030. Similarly, no new evidence has been discovered through any other source to justify reopening that investigation.

NHTSA recognizes that engine compartment fires create a serious safety problem. Manufacturers have consistently conducted safety recalls to remedy problems that lead to such fires, often in cases with a lower fire rate than that experienced by these Ford vehicles. Unfortunately, the available data indicates that the vast majority of these fires occurred after maintenance or repair work had been performed by Ford dealers or other maintenance facilities. NHTSA cannot compel dealers to conduct a safety recall and, under these circumstances, cannot compel Ford to remedy problems created by its dealers. Nevertheless, NHTSA has urged Ford on several occasions to take action to reduce the likelihood of engine compartment fires in these vehicles by notifying owners of the problem and bearing the expenses of repairs to correct the condition that can lead to such fires. To date, Ford has refused to do so.

In consideration of the available information, NHTSA has concluded that there is not a reasonable possibility that an order concerning recall and remedy of a safety-related defect in relation to the petitioner's allegations would be issued at the conclusion of an investigation. Further commitment of resources to reopen this investigation does not appear to be warranted. Therefore, the petition is denied.

Authority: 49 U.S.C. 30162; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: February 1, 1995.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 95–3174 Filed 2–8–95; 8:45 am]

BILLING CODE 4910–59–M

Maritime Administration

[Docket S–917]

Notice of Application for Written Permission Pursuant to Section 805(a) of the Merchant Marine Act, 1936, as amended; Waterman Steamship Corporation

Central Gulf Lines, Inc. (Central Gulf), a U.S. corporate affiliate of Waterman Steamship Corporation (Waterman), by letter of January 26, 1995, requests written permission pursuant to section 805(a) of the Merchant Marine Act, 1936, as amended (Act), and Waterman's Operating-Differential Subsidy Agreement (ODSA), Contract MA/MSB–450, to operate the U.S.-flag S/S ENERGY INDEPENDENCE (Vessel), Official Number 657540, in the coastwise trade of the United States. Central Gulf states that it has agreed to purchase the Vessel from New England Power Company (New England Power) and, in turn, own and operate the Vessel beginning on or about May 1, 1995 under time charter to New England Power for a term of fifteen years.

New England Power, which is headquartered in Westborough, Massachusetts, generates and transmits electricity to consumers in the New England area, including Vermont, New Hampshire, Rhode Island and Massachusetts. In addition, it regularly purchases coal for transportation by ship from east coast ports of the United States to its harbor side facilities located in Massachusetts.

According to Central Gulf, the Vessel will transport New England Power's proprietary cargo in the coastwise trade from points along the east coast of the United States to Brayton Point, Massachusetts or Salem, Massachusetts. At other times during the fifteen years, the Vessel may carry cargo in the coastwise trade of the United States for account of other clients of Central Gulf as yet undetermined. Central Gulf states that it may also operate the Vessel in the foreign trade from time to time for yet undetermined charterers.

The Vessel is a 38,234 long tons total deadweight capacity self-unloading bulk carrier with a coal and/or oil-fired steam turbine main engine and an inclined lift conveyor system. It was built by General Dynamics Corporation in Quincy, Massachusetts in 1983 and has been documented under the laws of the United States since that time. Central Gulf maintains that as a U.S. built, U.S. flag, U.S. owned and U.S. citizen-crewed vessel, the Vessel is coastwise-qualified within the meaning of section 27 of the Merchant Marine Act, 1920 (46 U.S.C. App. 883), popularly known as the Jones Act. It is also uniquely capable of transporting New England Power's cargo requirements, Central Gulf adds.

Central Gulf emphasizes that it will continue to function as a discrete corporate entity having entirely separate financial records and accounts, and that the operating and accounting activities of Central Gulf are, and will continue to be, entirely separate from the operating and accounting activities of Waterman.

Central Gulf believes that its instant application clearly warrants MARAD approval and section 805(a) permission should be granted until the expiration date of Waterman's ODS contract, which expires on December 31, 1996.

The application may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm or

corporation having any interest (within the meaning of section 805(a)) in Waterman's request and desiring to submit comments concerning the request must by 5:00 PM on February 22, 1995, file written comments in triplicate with the Secretary, Maritime Administration, together with petition for leave to intervene. The petition shall state clearly and concisely the grounds of interest, and the alleged facts relied on for relief.

If no petition for leave to intervene is received within the specified time or if it is determined that petitions filed do not demonstrate sufficient interest to warrant a hearing, the Maritime Administration will take such action as may be deemed appropriate.

In the event petitions regarding the relevant section 805(a) issues are received from parties with standing to be heard, a hearing will be held, the purpose of which will be to receive evidence under section 805(a) relative to whether the proposed operations (a) could result in unfair competition to any person, firm, or corporation operating exclusively in the coastwise or intercoastal service, or (b) would be prejudicial to the objects and policy of the Act relative to domestic trade operations.

(Catalog of Federal Domestic Assistance Program No. 20.805 (Operating-Differential Subsidies))

Dated: February 6, 1995.

By order of the Maritime Administrator.

Murray A. Bloom,

Acting Secretary.

[FR Doc. 95–3302 Filed 2–8–95; 8:45 am]

BILLING CODE 4910–81–P

National Highway Traffic Safety Administration

[Docket No. 95–007; Notice 1]

Antilock Brake Systems; Technical Report; Preliminary Evaluation of the Effectiveness of Antilock Brake Systems for Passenger Cars

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Request for comments.

SUMMARY: This notice announces the publication by NHTSA of a Technical Report on its *Preliminary Evaluation of the Effectiveness of Antilock Brake Systems for Passenger Cars.* The principal goals of ABS are to prevent skidding and loss-of-control due to locked-wheel braking, and to allow a driver to steer the vehicle during hard braking. NHTSA's report evaluates the accident rates of the ABS-equipped cars currently on the road, and compares them to the accident rates of similar cars without ABS.

DATES: Comments must be received no later than May 10, 1995.

ADDRESSES: *Report:* Interested people may obtain a copy of the report free of charge by sending a self-addressed mailing label to Ms. Glorious Harris (NAD–51), National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590.

Comments: All comments should refer to the docket and notice number of this notice and be submitted to: Docket Section, Room 5109, Nassif Building, 400 Seventh Street, SW, Washington DC 20590. [Docket hours, 9:30 a.m.–4:00 p.m., Monday through Friday.]

FOR FURTHER INFORMATION CONTACT: Mr. Charles J. Kahane, Acting Chief, Evaluation Division, Office of Strategic Planning and Evaluation, Plans and Policy, National Highway Traffic Safety Administration, Room 5208, 400 Seventh Street, SW, Washington, DC 20590 (202–366–2560).

SUPPLEMENTARY INFORMATION: Section 2507 of the NHTSA Authorization Act of 1991 directed NHTSA to publish an advance notice of proposed rulemaking (ANPRM) to consider the need for any additional brake performance standards for passenger cars, including antilock brake standards. On January 2, 1994, NHTSA published an ANPRM in which the agency announced its plans to consider various regulatory actions to improve the brake performance of light vehicles, particularly the benefits and costs related to requiring antilock brake systems (ABS). (59 FR 281). ABS serves to prevent skidding and loss-of-control due to locked-wheel braking, particularly on wet surfaces, and to allow a driver to steer the vehicle during hard braking.

Along with that rulemaking notice, NHTSA has studied the effectiveness of ABS on passenger cars. NHTSA compared the accident involvement rates of passenger cars equipped with Antilock Brake Systems (ABS) to the rates of counterpart cars without ABS, based on 1990–92 Florida, Pennsylvania and Missouri data, and the 1989–93 Fatal Accident Reporting System. In general, the statistical analyses compared the accident involvements of passenger cars of the first 2 model years with ABS to cars of the same makes, models and subseries, but from the last 2 model years before ABS became standard equipment. The principal findings and conclusions from the statistical analyses of accident experience of cars currently equipped with ABS were the following:

- ABS significantly reduced the involvements of passenger cars in multivehicle crashes on wet roads. ABS reduced police-reported crash involvements by an estimated 14 percent, and fatal involvement by 24 percent. The finding is consistent with the outstanding performance of ABS in stopping tests on wet roads.
- ABS had little effect on multivehicle crashes on dry roads.
- The risk of fatal collisions with pedestrians and bicyclists was reduced by a statistically significant 27 percent in passenger cars with ABS. Unlike the effects for multivehicle crashes, this reduction was about equally large on wet and dry roads.
- All types of run-off-road crashes—rollovers, side impacts with fixed objects and frontal impacts with fixed objects—increased significantly with ABS. Nonfatal run-off-road crashes increased by an estimated 19 percent, and fatal run-off-road crashes by 28 percent. The increase in run-off-road crashes was about the same under wet and dry road conditions.
- The overall, net effect of ABS on fatal as well as nonfatal crashes was close to zero.

It is unknown to what extent the increase in run-off-road crashes is a consequence of ABS, or is due to other causes. In particular, it is unknown to what extent, if any, the increase is due to incorrect responses by drivers to their ABS systems, and, if so, whether the effect is likely to persist in the future. The increase may involve all types of ABS run-off-road ABS or only certain ABS designs.

NHTSA welcomes public review of the technical report and invites the reviewers to submit comments about the data and the statistical methods used in the report. The agency is interested in learning of any additional data that could be used to expand or improve the analyses, especially any information about run-off-road crashes involving ABS-equipped cars or about factors that could be making current ABS-equipped cars more prone to running off the road. It is requested but not required that 10 copies of comments be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality business information, should be submitted to the Chief Counsel, NHTSA, at the street address

given above, and 7 copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. (49 CFR part 512).

All comments received before the close of business on the comment closing date will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested people continue to examine the docket for new material.

People desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Issued on February 6, 1995.

Donald C. Bischoff,

Associate Administrator for Plans and Policy.

[FR Doc. 95–3224 Filed 2–8–95; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

February 1, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0007
Form Number: IRS Form T
Type of Review: Extension
Title: Forest Activities Schedules
Description: Form T is filed by individuals and corporations to report income and deductions from the timber business. The IRS uses Form T to determine if the correct amount of income and deductions are claimed.
Respondents: Individuals or households, Business or other for-profit
Estimated Number of Respondents/ Recordkeepers: 37,000
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—37 hr., 4 min.
Learning about the law or the form—35 min.
Preparing and sending the form to the IRS—1 hr., 14 min.
Frequency of Response: Annually
Estimated Total Reporting/ Recordkeeping Burden: 1,438,930 hours

OMB Number: 1545–0117
Form Number: IRS Form 1099–OID
Type of Review: Extension
Title: Original Issue Discount
Description: Form 1099–OID is used for reporting original issue discount as required by section 6049 of the Internal Revenue Code. It is used to verify that income earned on discount obligations is properly reported by the recipient.
Respondents: Business or other for-profit
Estimated Number of Respondents: 9,185
Estimated Burden Hours Per Respondent: 10 minutes
Frequency of Response: Annually
Estimated Total Reporting Burden: 765,000 hours

OMB Number: 1545–0183
Form Number: IRS Form 4789
Type of Review: Extension
Title: Currency Transaction Report
Description: Financial institutions are required to file Form 4789 within 15 days of any transaction of more than $10,000. The information is used to check tax compliance.
Respondents: Business or other for-profit
Estimated Number of Respondents: 788.871
Estimated Burden Hours Per Respondent: 24 minutes
Frequency of Response: On occasion
Estimated Total Reporting/ Recordkeeping Burden: 2,185,805 hours

OMB Number: 1545–0199
Form Number: IRS Form 5306–SEP
Type of Review: Extension
Title: Application for Approval of Prototype Simplified Employee Pension-SEP
Description: This form is issued by banks, credit unions, insurance companies, and trade or professional associations to apply for approval of a Simplified Employee Pension Plan to be used more than one employer. The data collected is used to determine if the prototype plan submitted is an approved plan.
Respondents: Business or other for-profit
Estimated Number of Respondents/ Recordkeepers: 650
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—8 hr., 37 min.
Learning about the law or the form—1 hr., 4 min.
Preparing the form—2 hr., 11 min.
Copying, assembling and sending the form to the IRS—16 min.
Frequency of Response: On occasion
Estimated Total Reporting/ Recordkeeping Burden: 7,878 hours

OMB Number: 1545–1036
Form Number: IRS Form 8716
Type of Review: Extension
Title: Election to Have a Tax Year Other Than a Required Tax Year
Description: This form is filed by partnerships, S Corporations, personal service corporations, under section 444(a), to retain or to adopt a tax year that is not a required tax year. Service Centers accept Form 8716 and use the form information to assign mater-file codes that allow the Center to accept the filer's tax return filed for a tax year (fiscal year) that would not otherwise be acceptable.
Respondents: Business or other for-profit, Farms
Estimated Number of Respondents/ Recordkeepers: 40,000
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—2 hr., 23 min.
Learning about the law or the form—1 hr., 12 min.
Preparing and sending the form to the IRS—1 hr., 17 min.
Frequency of Response: Other
Estimated Total Reporting/ Recordkeeping Burden: 194,400 hours
Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 95–3172 Filed 2–8–95; 8:45 am]

BILLING CODE 4830–01–P

Public Information Collection Requirements Submitted to OMB for Review

January 31, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Bureau of the Public Debt (BPD)

OMB Number: 1535–0112
Form Number: None
Type of Review: Extension
Title: Sale and Issue of Marketable Book-Entry Treasury Bills, Notes, and Bonds
Description: These regulations require that bidders in Treasury Auctions provide certain information needed to process their request.
Respondents: Individuals or households, Business or other for-profit, Non-profit institutions, State, Local or Tribal Government
Estimated Number of Respondents: 1
Estimated Burden Hours Per Response: 1 hour
Frequency of Response: On occasion
Estimated Total Reporting Burden: 1 hour
Clearance Officer: Vicki S. Ott, (304) 480–6553, Bureau of the Public Debt, 200 Third Street, Parkersburg, West VA 26106–1328
OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 95–3173 Filed 2–8–95; 8:45 am]

BILLING CODE 4810–40–P

UNITED STATES INFORMATION AGENCY

Curriculum Development Project: Secondary School Civic Education for the Czech Republic

ACTION: Notice—request for proposals.

SUMMARY: The Advising, Teaching, and Specialized Programs Division of the Office of Academic Programs of the United States Information Agency's Bureau of Education and Cultural Affairs announces an open competition for an assistance award. Public or private non-profit organizations meeting the provisions described in IRS regulation 501(c)(3) may apply to cooperate with USIA in the administration of a one-to two-year project to support the development and implementation of new curriculum units for ninth and tenth grade civic education courses in the Czech Republic. The grantee organization will work with the Institute for Educational Development, a Czech non-profit organization affiliated with Charles University and concerned with educational reform and teacher training in the Czech Republic. The Institute works closely with the Ministry of Education of the Czech Republic on curriculum and teacher training. The program will comprise three phases: (1) Preliminary consultations in Prague with a curriculum development team of five Czech educators; (2) a three-month U.S.-based curriculum development workshop in which the team will produce draft curriculum units; and (3) follow-up consultations in the Czech Republic to assist with the training of a larger group of Czech practitioners in the implementation and review of the draft curriculum units.

Upon the successful completion of Phases I–III, additional funds may be available to the grantee organization for a fourth phase of activity to cooperate with the Institute for Educational Development and the curriculum development team in further reviewing and revising the draft materials and to provide broader training for implementation of the revised curriculum units with Czech teachers and administrators.

USIA solicits detailed proposals from U.S. educational institutions and public and private non-profit organizations to develop and administer this project. The cooperation with USIA will include regular consultation with USIA and with USIS officers in the Czech Republic with regard to program implementation, direction, and assessment. Proposals should demonstrate an understanding of the issues confronting education in the Czech Republic as well as expertise in civic education and curriculum development. The funding authority for the program cited above is provided through the Support for East European Democracies Act (SEED). Programs and projects must conform with Agency requirements and guidelines outlined in the Solicitation Package. USIA projects and programs are subject to the availability of funds.

ANNOUNCEMENT NAME AND NUMBER: All communications with USIA concerning this announcement should refer to the above title and reference number E/AS–95–03.

DATES: *Deadline for proposals.* All copies must be received at the U.S. Information Agency by 5 p.m. Washington, DC time on Friday, March 24, 1995. Faxed documents will not be accepted, nor will documents postmarked on March 24, but received at a later date. It is the responsibility of each applicant to ensure that proposals are received by the above deadline.

FOR FURTHER INFORMATION CONTACT: Office of Academic Programs, Advising, Teaching and Specialized Programs Division, E/AS (room 256), U.S. Information Agency, 301 4th Street SW., Washington, DC 20547, telephone number 202–619–6038, telefax number 202–619–6790, e-mail: skux@usia.gov, to request a Solicitation Package, which includes more detailed award criteria; all application forms; and guidelines for preparing proposals, including specific criteria for preparation of the proposal budget. Please specify USIA Academic Exchange Specialist Sally Kux on all inquiries and correspondences.

Interested applicants should read the complete **Federal Register** announcement before addressing inquiries to the Advising, Teaching, and Specialized Programs Division (Dr. Kux) or submitting their proposals. Once the RFP deadline has passed, the Office of Academic Programs, Advising, Teaching, and Specialized Programs Division may not discuss this competition in any way with applicants until the Bureau proposal review process has been completed.

ADDRESSES: Applicants must follow all instructions given in the Solicitation Package. The original and 9 copies of the complete application should be sent to: U.S. Information Agency, Ref.: E/AS–95–03, Office of Grants Management, E/XE, Room 336, 301 4th Street, SW., Washington, DC 20547.

SUPPLEMENTARY INFORMATION: Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political charter and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including but not limited to race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle.

Overview

The goal of the project is to assist the Institute for Educational Development in Prague, Czech Republic, to develop up-to-date curriculum units to be taught within existing civic education courses at the ninth and tenth grade levels and to assist in training teachers for the implementation of these units. The rationale for this project is that improving citizenship education at the secondary school level will better prepare Czech students to participate actively in building a pluralistic, democratic society, and will promote democratic relations among members of the school community, including students, teachers, school administrators, and parents. Applicants may suggest topics to be developed by the curriculum team in their proposals; however, final determination of appropriate topics will be made by the curriculum development team and the Institute for Educational Development in cooperation with the grantee organization during the first phase of the project.

Program Description

A curriculum development team of five practitioners (e.g., classroom teachers, curriculum specialists, and Ministry officials) selected by the Institute of Educational Development in consultation with USIS Prague, will undertake preliminary work in Prague over a period of 3–6 months (Phase I). In this phase, members of the curriculum development team, in consultation with a specialist from the grantee organization, will familiarize themselves with civics curricula and teaching materials used in the U.S. and will select the topics to be explored in the draft curriculum units. In the second phase, members of the curriculum development team will spend approximately three months in a highly structured U.S.-based workshop sponsored and organized by the U.S. grantee organization, attending focused seminars, observing relevant aspects of the U.S. educational system, and drafting teacher and student materials for the curriculum units in consultation with U.S. specialists. The grantee organization will be responsible for introducing the Czech team to leading U.S. civic educators and to a broad range of relevant resources. The workshop schedule should incorporate time for individual and group work on materials as well as intensive training on specific approaches to the teaching of civics topics. In addition, the workshop should include field experiences which are relevant to the materials being produced (such as visits to schools and professional associations). In the third phase, the curriculum development team will work in the Czech Republic with Czech teacher trainers and U.S. specialists from the grantee organization to provide introductory training for a larger group of practitioners in methods for implementing and reviewing the draft curriculum units in the civics classroom.

Visa/Insurance/Tax Requirements

U.S. lecturers and consultants participating in the project must be U.S. citizens. Programs must comply with J–1 visa regulations. Please refer to program specific guidelines in the Solicitation Package for further details. Administration of the program must be in compliance with reporting and withholding regulations for federal, state, and local taxes as applicable. Recipient organizations should demonstrate tax regulation adherence in the proposal narrative and budget.

Proposed Budget

Applicants must submit a comprehensive budget for the program, the award for which will not exceed $150,000. Applicants should note that Phase II (curriculum development workshop) is the key element of this program; proposed budgets should allocate resources accordingly. The budget submission should include summary budget, in addition to separate administrative and program budgets. For further clarification, applicants may provide separate sub-budgets for each program component, phase, location, or activity. Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000, and budget submissions from such organizations should not exceed this amount. Please refer to the Solicitation Package for complete budget guidelines and formatting instruction.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will be reviewed by the Agency contracts office, as well as the USIA Office of East European and NIS Affairs and USIS Prague. Proposals may also be reviewed by the Office of the General Counsel or by other Agency elements. Funding decisions are at the discretion of the USIA Associate Director for Educational and Cultural Affairs. Final technical authority for grant awards resides with the USIA grants officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and carry equal weight in the proposal evaluation:

1. Quality of the program idea. Proposals should exhibit originality, substance, precision, and relevance to Agency mission. Proposals should reflect an advanced, current understanding of relevant scholarly fields and disciplines;

2. Program planning. Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity and should provide a clear picture of the program. Agenda and plan should adhere to the program overview and guidelines described above.

3. Ability to achieve program objectives. Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

4. Multiplier effect/impact. Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

5. Support of Diversity. Proposals should demonstrate the recipient's commitment to promoting the awareness and understanding of diversity.

6. Institutional Capacity. Proposed personnel and institutional resources should be articulated clearly and should be adequate and appropriate to achieve the program or project's goals. The applicant organization should demonstrate a capacity to work cooperatively with Czech organizations and with USIA.

7. Institution's Record/Ability. Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts. The Agency will consider the past performance of prior recipients and the demonstrated potential of new applicants.

8. Follow-on Activities. Proposals should provide a plan for continued follow-on activity (without USIA

support) which insures that USIA supported programs are not isolated events.

9. Project Evaluation. Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. USIA recommends that the proposal include a draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives. Award-receiving organizations/institutions will be expected to submit intermediate reports after each project component is concluded or quarterly, whichever is less frequent.

10. Cost effectiveness. The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

11. Cost-sharing. Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

12. Value to U.S.-Partner Country Relations. Proposed projects will be assessed by USIA's geographic area desk and overseas officers with regard to program need, potential impact, and significance in the partner country.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The needs of the program may require the award to be reduced, revised, or increased. Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about May 12, 1995. Awards made will be subject to periodic reporting and evaluation requirements.

Dated: January 31, 1995.

John P. Loiello,

Associate Director, Educational and Cultural Affairs.

[FR Doc. 95–2935 Filed 2–8–95; 8:45 am]

BILLING CODE 8230–01–M

Hubert H. Humphrey Fellowship Program

ACTION: Notice—request for proposals.

SUMMARY: The Office of Academic Programs of the United States Information Agency's Bureau of Educational and Cultural Affairs announces an open competition for an assistance award. Washington-based public and private non-profit organizations meeting the provisions described in IRS regulation 501(c)(3) may apply to assist USIA in the administration of the Hubert H. Humphrey Fellowship Program Washington Workshop. The organization shall plan and implement a seven-day conference for approximately 180 mid-career professionals from developing countries, Central/Eastern Europe, and the NIS during November 11–17, 1995.

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' Programs and projects must conform with Agency requirements and guidelines outlined in the Solicitation Package. USIA projects and programs are subject to the availability of funds.

Announcement name and number: All communications with USIA concerning this announcement should refer to the above title and reference number E/ASU–95–04.

DATES: Deadline for proposals: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, D.C. time on Thursday, March 23, 1995. Faxed documents will not be accepted, nor will documents postmarked on March 23 but received at a later date. It is the responsibility of each applicant to ensure that proposals are received by the above deadline.

FOR FURTHER INFORMATION CONTACT: Ms. Leigh Rieder or Ms. Carolyn Gabrielson, Specialized Programs Unit, E/ASU, U.S. Information Agency, 301 4th Street, S.W., Washington, D.C. 20547, telephone: (202) 619–5289, fax: (202) 401–1433, internet address: LRIEDER@USIA.GOV, to request a Solicitation Package, which includes more detailed award criteria; all application forms; and guidelines for preparing proposals, including specific criteria for preparation of the proposal budget. Please specify the USIA Program Officer, Leigh Rieder, on all inquiries and correspondence. Interested applicants should read the complete **Federal Register** announcement before addressing inquiries to the Specialized Programs Unit or submitting their proposals. Once the RFP deadline has passed, the Specialized Programs Unit may not discuss this competition in any way with applicants until the Bureau proposal review process has been completed.

ADDRESSES: Applicants must follow all instructions given in the Solicitation Package. The original and six copies of the application should be sent to: U.S. Information Agency, Ref.: E/ASU–95–04, Office of Grants Management, E/XE, Room 336, 301 4th Street, S.W., Washington, D.C. 20547.

SUPPLEMENTARY INFORMATION: Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including but not limited to race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle.

Overview

The Hubert H. Humphrey Fellowship Program provides a year of non-degree, graduate level study and related professional experiences to mid-level professionals from developing countries, Central/Eastern Europe, and the NIS. Fellowships are granted competitively to public- and private-sector candidates with a commitment to public service in the fields of natural resources/environmental management, public policy analysis/administration, economic development, agricultural development/economics, finance/banking, human resource management/personnel, urban and regional planning, public health policy/management, technology policy/management, educational planning, and communications/journalism. Fellows are placed by professional field in groups of 10–12 at one of 15 participating host universities around

the country. The Agency is assisted in the administration of the program by the Institute of International Education (IIE) under a cooperative agreement with the Agency. Fellows are nominated for the program by USIA overseas posts or Fulbright Commissions based on their potential for national leadership, commitment to public service, and professional and academic qualifications. By providing these future leaders with exposure to U.S. society, and to current U.S. approaches to the fields in which they work, the program provides a basis for establishing lasting ties among U.S. citizens and their professional counterparts in other countries.

The objectives of the Washington Workshop are to:

* Enhance fellows' understanding of U.S. social, cultural, and political processes and institutions to provide a framework for interpreting the events of their fellowship year;

* Provide opportunities for professional networking among fellows and with Washington area peers;

* Introduce fellows to the unique resources available in Washington, D.C.

Guidelines

Non-profit organizations with key program staff based in the Washington, D.C. metropolitan area and available for frequent meetings with USIA staff are invited to submit proposals. Organizations also must have experience in conference management, professional exchanges, and international exchanges. Only organizations with at least four years of experience in international exchange activities are eligible to apply for this award.

The Agency encourages proposals from eligible organizations whose staffs reflect a broad variety of ethnic backgrounds, whose programs encompass a range of diversity interests, and/or whose mission includes furthering the interests of traditionally under-represented groups.

The recipient organization will be responsible for most arrangements associated with this workshop. These include organizing a coherent schedule of activities, making lodging and local transportation arrangements for participants, preparing all necessary support materials, working with Humphrey Coordinators from host universities and IIE staff to achieve maximum workshop effectiveness, conducting a final evaluation, and other details which are outlined in the Solicitation Package. Drafts of all printed materials developed for the workshop should be submitted to the Agency for review and approval. All official documents should highlight the U.S. government's role as program sponsor and funding source.

Proposed Budget

The award for this project may not exceed $235,000, and cost sharing is strongly encouraged. Applicants must submit a comprehensive, line-item budget for the entire workshop. Specific guidance is contained in the Solicitation Package. There must be a summary budget as well as a break-down reflecting both the administrative budget and the program budget. Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines started herein and in the Solicitation Package. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will be reviewed by the Agency contracts office. Proposals may also be reviewed by the Office of the General Counsel or by other Agency elements. Funding decisions are at the discretion of the USIA Associate Director for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the USIA grants officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. Quality/responsiveness of the program idea. Proposals should exhibit originality, substance, precision, cultural sensitivity, and responsiveness to the material set forth herein and in the Solicitation Package. Proposals should clearly demonstrate how the institution will meet the workshop's objectives and plan.

2. Multiplier effect/impact. Proposed programs should strengthen long-term mutual understanding and encourage collaboration among fellows and with U.S. counterparts after the fellowship year.

3. Support of Diversity. Proposals should demonstrate the recipient's commitment to promoting the awareness and understanding of diversity.

4. Institutional Capacity. Proposed personnel and institutional resources should be adequate and appropriate to achieve the workshop's goals.

5. Institution's Record/Ability. Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts. Successful experience with organizing workshops for international participants is also very desirable. The Agency will consider the past performance of prior recipients and the demonstrated potential of new applicants.

6. Project Evaluation. Proposals should include a plan to evaluate the workshop's success, both as the activities unfold and at the end of the program. USIA recommends that the proposal include a draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original workshop objectives.

7. Cost-effectiveness. The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

8. Cost-sharing. Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The needs of the program may require the award to be reduced, revised, or increased. Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about May 8, 1995. Awards made will be subject to periodic reporting and evaluation requirements.

Dated: January 31, 1995.

John P. Loiello,

Associate Director, Educational and Cultural Affairs.

[FR Doc. 95–2934 Filed 2–8–95; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register

Vol. 60, No. 27

Thursday, February 9, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the ''Government in the Sunshine Act'' (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL COMMUNICATIONS COMMISSION

Deletion of Agenda Items From February 7th Open Meeting

The following items have been deleted from the list of agenda items scheduled for consideration at the February 7, 1995, Open Meeting and previously listed in the Commission's Notice of January 31, 1995.

Item No, Bureau, and Subject

6—Cable Services—Title: Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation (MM Docket No. 92–266 and MM Docket No. 93–215). Summary: The Commission will consider providing local franchising authorities and small systems with additional methods of complying with cable rate regulations.

7—Cable Services—Title: Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation (MM Docket No. 92–266). Summary: The Commission will reconsider its actions, which prohibit small operators and low-price systems that have been provided with transition relief from adjusting their transition rates to reflect increases in inflation.

Dated: February 6, 1995.

Federal Communications Commission.

William F. Caton,

Secretary.

[FR Doc. 95–3344 Filed 2–7–95; 10:43 am]

BILLING CODE 6712–01–M

FEDERAL ELECTION COMMISSION

''FEDERAL REGISTER'' NUMBER: 95–2739.

PREVIOUSLY ANNOUNCED DATA AND TIME: Thursday, February 9, 1995 at 10: 00 a.m. Meeting Open to the Public.

THE FOLLOWING ITEM WAS ADDED TO THE AGENDA:

Implementation of Computer Upgrade (continued from meeting of February 2, 1995).

DATE AND TIME: Thursday, February 14, 1995 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This Meeting Will Be Closed to the Public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g. § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration
Internal personnel rules and procedures or matters affecting a particular employee

DATE AND TIME: Wednesday, February 15, 1995 at 10:00 a.m.

PLACE: 999 E Street, N.W. Washington, D.C. (Ninth Floor).

STATUS: This Oral Hearing Will Be Open to the Public.

MATTER BEFORE THE COMMISSION:

Public Hearing on Regulations Governing Publicly Financed Presidential Primary and General Election Candidates.

DATE AND TIME: Thursday, February 16, 1995 at 10:00 a.m.

PLACE: 999 E Street, N.W. Washington, D.C. (Ninth Floor).

STATUS: This Meeting Will Be Open to the Public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes
Advisory Opinion 1995–03: Don White on behalf of the Gramm '96 Committee
Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 219–4155.

Delores Hardy.

Administrative Assistant.

[FR Doc. 95–3424 Filed 2–7–95; 2:31 pm]

BILLING CODE 6715–01–M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

''FEDERAL REGISTER'' CITATION OF PREVIOUS ANNOUNCEMENT: [60 FR 6771, February 3, 1995]

STATUS: Open meeting.

PLACE: 450 Fifth Street, N.W., Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: February 3, 1995.

CHANGE IN THE MEETING: Deletion.

The following items will not be considered at an open meeting scheduled for Wednesday, February 8, 1995, at 10:00 a.m.:

Whether to adopt proposed rules 18f–3 and 6c–10 under the Investment Company Act of 1940, and related rule and form amendments. Rule 18f–3 would allow mutual funds to issue multiple classes of shares, and the form amendments would prescribe prospectus disclosure requirements for multiple class and master-feeder funds. Rule 6c–10 would allow mutual funds to impose back-end loads, including contingent deferred sales loads; the form amendment would clarify that prospectus disclosure requirements for deferred sales loads apply to all types of back-end loads.

Whether to propose for public comment amendments to rule 6c–10 to allow mutual funds to impose sales loads paid in one or more installments. Related form amendments would prescribe prospectus disclosure requirements for installment loads.

Commissioner Wallman, as duty officer, determined that Commission business required the above change and that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary (202) 942–7070.

Dated: February 7, 1995.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–3367 Filed 2–7–95; 2:31 pm]

BILLING CODE 8010–01–M

Corrections

Federal Register
Vol. 60, No. 27
Thursday, February 9, 1995

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 157

[Docket No. RM81-19-000]

Project Cost and Annual Limits

Correction

In rule document 95–2707 beginning on page 6657 in the issue of Friday, February 3, 1995 make the following correction:

On page 6658, in the first column, in Table I, in the second column, the heading ''Automobile projected cost limit (col. 1)'' should read ''Auto. Proj. Cost Limit (Col. 1)'' and in the third column, the heading ''Prior notice projected cost limit (col. 2)'' should read ''Prior Notice Proj. Cost Limit (Col. 2)''.

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 94-AGL-28]

Establishment of Class E Airspace; Chamberlain, SD, Chamberlain Municipal Airport

Correction

In rule document 95–1534 beginning on page 4079 in the issue of Friday, January 20, 1995, make the following correction:

§ 71.1 [Corrected]

On page 4080, in the first column, under the heading ''**AGL SD E5 Chamberlain, SD (New)**'', in the first line, ''(Lat. 43°45′54x″ N.,'' should read (Lat. 43°45′54″ N,''

BILLING CODE 1505–01–D

Federal Register

Thursday
February 9, 1995

Part II

Environmental Protection Agency

40 CFR Parts 261, 271, and 302
Hazardous Waste: Identification and Listing; Carbamate Production; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 261, 271, and 302

[SWH–FRL–5150–3]

RIN 2050–AD59

Hazardous Waste Management System; Carbamate Production Identification and Listing of Hazardous Waste; and CERCLA Hazardous Substance Designation and Reportable Quantities

AGENCY: U.S. Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is amending the regulations for hazardous waste management under the Resource Conservation and Recovery Act (RCRA) to reduce hazards to human health and the environment from the ongoing manufacture of carbamate chemicals, which are formulated for use as pesticides and in the production of synthetic rubber. EPA is listing as hazardous six wastes generated during the production of carbamate chemicals. EPA is providing an exemption from the definition of hazardous waste for certain wastes, if the generator demonstrates that hazardous air pollutants are not being discharged or volatilized during waste treatment. EPA is also exempting from the definition of hazardous wastes biological treatment sludges generated from the treatment of certain wastes provided the sludges do not display any of the characteristics of a hazardous waste (i.e., ignitability, corrosivity, reactivity, or toxicity). The Agency is also adding 58 specific chemicals to the list of commercial chemical products that are hazardous wastes when discarded and to the list of hazardous constituents upon which listing determinations are based. EPA is deferring action on 12 specific chemicals and 4 generic categories.

This action is taken under the authority of sections 3001(e)(2) and 3001(b)(1) of the Hazardous and Solid Waste Amendments of 1984 (HSWA), which direct EPA to make a hazardous waste listing determination for carbamate wastes. The effect of listing these wastes will be to subject them to regulation as hazardous wastes under subtitle C of RCRA; and the notification requirements of section 103 under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). EPA is not taking action at this time to adjust the one-pound statutory reportable quantities (RQs) for these substances.

EFFECTIVE DATE: This final rule is effective August 9, 1995.

ADDRESSES: The official record of this rulemaking is identified by Docket Number F–95–CPLF–FFFFF and is located at the following address. EPA RCRA Docket Clerk Room 2616 (5305), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

The docket is open from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. The public must make an appointment to review docket materials by calling (202) 260–9327. The public may copy 100 pages from the docket at no charge; additional copies are $0.15 per page.

FOR FURTHER INFORMATION CONTACT: The RCRA/Superfund Hotline, toll-free, at (800) 424–9346 or at (703) 920–9810. The TDD Hotline number is (800) 553–7672 (toll-free) or (703) 486–3323 in the Washington, DC metropolitan area. For technical information on the RCRA hazardous waste listings, contact John Austin, Office of Solid Waste (5304), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC, 20460, (202) 260–4789.

For technical information on the CERCLA aspects of this rule, contact: Ms. Gerain H. Perry, Response Standards and Criteria Branch, Emergency Response Division (5202G), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC, 20460, (703) 603–8760.

SUPPLEMENTARY INFORMATION: The contents of the preamble to this final rule are listed in the following outline:

I. Legal Authority

These regulations are being promulgated under the authority of Sections 2002(a) and 3001 (b) and (e)(1) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912(a), and 6921 (b) and (e)(1) (commonly referred to as RCRA), and section 102(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. 9602(a).

II. Background

A. Introduction

As part of its regulations implementing Section 3001(e) of the Resource Conservation and Recovery Act of 1976, as amended (RCRA), EPA published a list of hazardous wastes that includes hazardous wastes generated from specific sources. This list has been amended several times, and is published in 40 CFR 261.32. In this action, EPA is amending this section to

add six wastes generated during the production of carbamate chemicals. In addition, under the authority of section 3001 of RCRA, EPA maintains at 40 CFR 261.33 a list of commercial chemical products or manufacturing chemical intermediates that are hazardous wastes if they are discarded or intended to be discarded. In this action, the Agency is amending 40 CFR 261.33 to add 58 specific materials to this list.

All hazardous wastes listed under RCRA and codified in 40 CFR §§ 261.31 through 261.33, as well as any solid waste that exhibits one or more of the characteristics of a RCRA hazardous waste (as defined in 40 CFR Sections 261.21 through 261.24), are also hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. See CERCLA Section 101(14)(C). CERCLA hazardous substances are listed in Table 302.4 at 40 CFR 302.4 along with their reportable quantities (RQs). Accordingly, the Agency is adding the newly identified wastes in its action as CERCLA hazardous substances in Table 302.4 of 40 CFR 302.4. EPA is not taking action at this time to adjust the one-pound statutory RQs for these substances.

III. Summary of Proposal

A. Proposed New Hazardous Wastes

In the March 1, 1994 proposed rule (59 FR 9808) the Agency proposed to list as hazardous six wastes generated during the production of carbamates:

K156—Organic waste (including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates) from the production of carbamates and carbamoyl oximes.

K157—Wastewaters (including scrubber waters, condenser waters, washwaters, and separation waters) from the production of carbamates and carbamoyl oximes.

K158—Bag house dust, and filter/separation solids from the production of carbamates and carbamoyl oximes.

K159—Organics from the treatment of thiocarbamate wastes.

K160—Solids (including filter wastes, separation solids, and spent catalysts) from the production of thiocarbamates and solids from the treatment of thiocarbamate wastes.

K161—Purification solids (including filtration, evaporation, and centrifugation solids), bag house dust, and floor sweepings from the production of dithiocarbamate acids and their salts. (This listing does not include K125 or K126.)

The Agency proposed adding K156, K157, K158, K159, K160, and K161 to 40 CFR 261.32 because the wastes satisfy the criteria in 40 CFR 261.11(a)(1–3) for listing hazardous wastes.

The Agency also proposed to add 70 substances and 4 generic classes of chemicals to 40 CFR 261.33. EPA maintains at 40 CFR 261.33 a list of discarded commercial chemical products, off specification species, container residues, and spill residues thereof, which are regulated as hazardous wastes. The Agency proposed to list 22 of the 70 substances as acutely hazardous under 40 CFR 261.33(e), because toxicological studies have found the substances to be fatal to humans in low doses or in the absence of data on human toxicity, it has been shown in animal studies to have an oral (rat) LD50 of less than 50 milligrams per kilogram, a dermal (rabbit) LD50 of less than 200 milligrams per kilogram, an inhalation (rat) LC50 of less than 2 mg/L, or is otherwise capable of causing or significantly contributing to serious illness (see 40 CFR 261.11(a)(2)). The remaining 48 substances and 4 generic classes of carbamate chemicals (i.e., carbamates, carbamoyl oximes, thiocarbamates, and dithiocarbamates) were proposed to be listed under 40 CFR 261.33(f) as toxic hazardous wastes pursuant to 40 CFR 261.11(a)(3). These substances were listed in Tables 5 and 6 of the proposed rule (59 FR 9812).

B. Determinations Not To List Certain Carbamate Wastes as Hazardous Waste

As a result of the Agency's studies, a number of generic groups of wastes produced from the manufacture of carbamates, carbamoyl oximes, thiocarbamates, and dithiocarbamates were not found by the Agency to require additional regulation as a listed hazardous waste under RCRA. The Agency proposed to not list as hazardous the following categories of wastes:

—Spent carbon and waste water treatment sludges from the production of carbamates and carbamoyl oximes

—Wastewaters from the production of thiocarbamates and treatment of wastes from thiocarbamate production

—Process Wastewater (including supernates, filtrates, and washwaters) from the production of dithiocarbamates

—Reactor vent scrubber water from the production of dithiocarbamates

—Organic wastes (including spent solvents, solvent rinses, process decantates, and still bottoms) from the production of dithiocarbamates)

C. Exemptions

For wastewaters from the production of carbamate and carbamoyl oxime chemicals (Hazardous waste code K157), the Agency proposed to exempt from the definition of hazardous waste those wastewaters that do not exceed a total concentration of 5 parts per million by weight (ppmwt) of formaldehyde, methyl chloride, methylene chloride, and triethylamine. Under § 261.3(a)(2)(iv), the new exemptions to the definition of hazardous wastes, the exemption was proposed to read as follows:

§ 261.3(a)(2)(iv) * * *; or

(F) One or more of the following wastes listed in § 261.32—wastewaters from the production of carbamates and carbamoyl oximes (EPA Hazardous Waste No. K157)—Provided, that the maximum weekly usage of formaldehyde, methyl chloride, methylene chloride, and triethylamine (including all amounts that can not be demonstrated to be reacted in the process or is recovered, i.e., what is discharged or volatilized) divided by the average weekly flow of process wastewater prior to any dilutions into the headworks of the facility's wastewater treatment system does not exceed a total of 5 parts per million by weight.

The Agency also proposed to specifically exempt biological treatment sludges from the treatment of wastewaters from the production of carbamates and carbamoyl oximes from the definition of hazardous waste. Under § 263.3(c)(2)(ii), a new exemption to the definition of hazardous wastes is created for sludges from the biological treatment of these wastewaters. This new exemption was proposed to read as follows:

§ 261.3(c)(2)(ii) * * *

(D) Biological treatment sludge from the treatment of one of the following wastes listed in § 261.32—wastewaters from the production of carbamates and carbamoyl oximes (EPA Hazardous Waste No. K157).

IV. Changes to the Proposed Rule

A. Exemptions

The Agency is finalizing a regulatory strategy which allows for a concentration-based exemption from the K156 and K157 listings. In the March 1, 1994 proposed rule, a concentration-based exemption was specifically proposed only for K157. Using models to calculate the atmospheric concentrations of chemicals of concern resulting from the management of K157 and wastewaters derived from K156, the Agency found that for these wastewaters a total concentration of 5 parts per million by weight (ppmwt) would be protective for wastewaters containing formaldehyde, methyl chloride,

methylene chloride, and triethylamine. Assuming further wastewater treatment as necessary before discharge, under the plausible mismanagement scenario of treatment in open tanks for K157 or wastewater derived from the treatment of K156, the Agency views this level as protective of human health and the environment. In addition, EPA notes that the 40 CFR Part 268 land disposal restrictions would not apply to wastes managed in tanks except to the extent the wastes were also managed in land-based units such as surface impoundments. Because the wastewaters from the treatment of K156 are similar to K157 wastes in composition and management, the Agency foresees no significant risks from the exemption of K156 wastes derived from K156 in the same manner as K157 and is finalizing a concentration-based exemption to the listing description of both K157 wastewaters, and wastewaters derived from the treatment of K156 organic wastes.

In response to comment, the Agency is modifying the exemption proposed to allow that portion of the chemicals of concern which is ''destroyed through treatment'' to be considered in the mass balance determination of exemption status. Under § 261.3(a)(2)(iv), new exemptions to the definition of hazardous wastes are created for these wastewaters. These new exemptions read (changes to proposal in **bold**):

§ 261.3(a)(2)(iv) * * *; or

(F) One or more of the following wastes listed in § 261.32—wastewaters from the production of carbamates and carbamoyl oximes (EPA Hazardous Waste No. K157)—Provided that the maximum weekly usage of formaldehyde, methyl chloride, methylene chloride, and triethylamine (including all amounts that can not be demonstrated to be reacted in the process, **destroyed through treatment**, or is recovered, i.e., what is discharged or volatilized) divided by the average weekly flow of process wastewater prior to any dilutions into the headworks of the facility's wastewater treatment system does not exceed a total of 5 parts per million by weight; **or**

(G) Wastewaters derived from the treatment of one or more of the following wastes listed in § 261.32—organic waste (including heavy ends still bottoms, light ends, spent solvents, filtrates, and decantates) from the production of carbamates and carbamoyl oximes (EPA Hazardous Waste No. K156).—Provided, that the maximum concentration of formaldehyde, methyl chloride, methylene chloride, and triethylamine prior to any dilutions into the headworks of the facility's wastewater treatment system does not exceed a total of 5 milligrams per liter.

Under these exemptions, wastes which are calculated to contain less than a total concentration of 5 ppmwt for the sum of the four constituents of concern would not be hazardous wastes, and any sludges generated from further biological treatment would not be derived from hazardous wastes, assuming wastewaters are <5 ppmwt at the point of generation.

The Agency is not requiring that generators taking advantage of the K157 exemption actually monitor the concentration of the constituents of concern in untreated wastewater, but uses the same strategy used in other exemptions for wastewaters discharged into the headworks of a wastewater treatment system found at 40 CFR 261.3(a)(2)(4) (46 FR 56582, November 17, 1981). A generator must be able to demonstrate that the total amount of all constituents of concern that is discharged to the environment during the production week divided by the average weekly flow of the process unit discharge into the headworks of the final wastewater treatment step not exceed the standards.

This demonstration can be made through an audit of various records already maintained at most facilities, including invoices showing material purchases, lists including to whom and how much inventory was distributed and other, similar, operating records. A facility can exclude that portion of the constituents of concern not disposed to wastewaters. No portion of the material of concern which is volatilized may be excluded from the calculation. Under current regulations (40 CFR 262.11 and 268.7) generators are required to determine whether their wastes are hazardous. Facilities claiming the exemption would have to be able to demonstrate that they meet the exemption. Such information would be intended to verify compliance with this concentration standard. An EPA inspector would look to this information to verify the assessment made by the generator, and may employ direct analytical testing as further verification. If either measurement indicate a total concentration greater than 5 ppmwt for the sum of the concentrations of the four chemicals of concern, then the wastes is subject to regulation as K157 hazardous waste. In this manner, the Agency seeks to discourage and prevent air stripping or other technologies which would merely continue to volatilize these pollutants of concern.

Commenters argued and the Agency agrees that wastes derived from K156 are no longer hazardous wastes provided that the maximum concentration of formaldehyde, methyl chloride, methylene chloride, and triethylamine prior to any dilutions into the headworks of the facility's wastewater treatment system does not exceed a total of 5 milligrams per liter. In the case of wastewaters derived from the treatment of K156 wastes, other wastes may be commingled for treatment. However, other hazardous wastes mixed with K156 or K157 wastes are not exempt. Records of incinerator feed rates and destruction efficiency can be used to support a facilities claim of exemption. A facility can demonstrate that it meets either of these exemptions only in part by direct effluent measurement at the headworks. In each case, the facility must also incorporate any emissions from the treatment system prior to the headworks in the overall determination of regulatory status.

The Agency is also expanding the proposed exemption of K157 wastewater treatment sludges to include sludges from the treatment of K156 wastes. The Agency is specifically exempting biological treatment sludges from the treatment of K156 and K157 wastes from the production of carbamates and carbamoyl oximes from the definition of hazardous waste, because it has characterized these sludges and found that they do not pose significant risks to human health or the environment in the advent of plausible mismanagement. Under § 263.3(c)(2)(ii), a new exemption to the definition of hazardous wastes is created for sludges from the biological treatment of these wastewaters. This new exemption would read (changes to proposal in **bold**):

§ 261.3(c)(2)(ii) * * *

(D) Biological treatment sludge from the treatment of one of the following wastes listed in § 261.32—**organic waste (including heavy ends still bottoms, light ends, spent solvents, filtrates, and decantates) from the production of carbamates and carbamoyl oximes (EPA Hazardous Waste No. K156), and** wastewaters from the production of carbamates and carbamoyl oximes (EPA Hazardous Waste No. K157).

Without exemption, a large volume of previously disposed wastes and sludge currently collecting within the various treatment systems would require management as hazardous waste under the derived-from rule (40 CFR 261.3(c)(2)). However, in the case of the biological sludges from the treatment of carbamate and carbamoyl oxime wastewaters, the Agency could only identify risks resulting from the hazardous volatile air pollutants present in the wastewaters being treated. Neither these air pollutants nor other hazardous substances were found to be accumulating in the biological treatment

sludges studied by the Agency. Therefore, the Agency finds that these sludges do not meet the definition of hazardous waste, and is exempting these sludges derived from K156 and K157 wastes from the definition of hazardous wastes, provided the wastes are not otherwise characteristically hazardous. EPA believes that this exemption is particularly appropriate because of the small number of facilities in this industry and the Agency's thorough investigation of carbamate wastes.

B. Appendix VII and Appendix VIII

In the March 1, 1994 proposed rule, the Agency had proposed the listing of acetone, hexane, methanol, methyl isobutyl ketone, and xylene as part of the basis for listing of one or more hazardous wastes in part 261 appendix VII and as hazardous constituents for addition to part 261 appendix VIII. Because these constituents were not significant in the Agency's multipathway risk assessment, the Agency is not finalizing the addition of acetone, hexane, methanol, methyl isobutyl ketone, and xylene to part 261 appendix VII. Furthermore, because these constituents are no longer significant to the carbamate industry, and their addition to appendix VIII could have far reaching impact, the Agency is also not adding these solvents to appendix VIII.

In reassessing the basis for listing, the Agency discovered that although formaldehyde in K156 wastes had demonstrated significant risks via the direct inhalation pathway (59 FR 9827) it was inadvertently omitted from the appendix VII basis of listing in the **Federal Register** notice for the proposed rule. The presence and risks attributed to formaldehyde in K156 waste are clearly documented in the proposal. The Agency has corrected this omission and added formaldehyde to the appendix VII basis for listing of K156. The Agency is also correcting the inadvertent omission of antimony and arsenic to the appendix VII basis of listing for K161 (see 59 FR 9830 and 9835).

Commenters also brought to the Agency's attention, that Agency had not listed the generic listings of carbamates, carbamoyl oximes, thiocarbamates, or dithiocarbamates, N.O.S. to appendix VIII. Based on either direct toxicological studies or the extrapolation of existing studies to the chemical group, the Agency finds each member of these groups may exhibit toxicological properties or degrade to other known toxic substances. As stated previously, the Agency is deferring the addition of the generic U360 through U363 listings until comment is taken of options to narrow their scope. This inadvertent omission of addition of these categories to appendix VIII will be corrected in the future rulemaking. Therefore, the Agency has not finalized the addition of these generic descriptions to appendix VII.

C. Listing of Commercial Chemical Products

The March 1, 1994 notice (59 FR 9808) proposed the addition of 22 substances to 40 CFR 261.33(e). This final action adds 18 of the 22 substances to the list of acutely hazardous wastes. After evaluation of comments received, four substances (bendiocarb, thiophanate-methyl, thiodicarb, and propoxur), proposed for addition to 40 CFR 261.33(e) as acutely hazardous, are instead being added to 40 CFR 261.33(f) as toxic wastes when discarded. In each case, the Agency found that these four substances did not meet the § 261.11(a)(2) criteria for listing in § 261.33(e).

In the case of propoxur, the Agency has examined the more current inhalation studies provided, as well as additional studies performed on propoxur concentrates, and finds that these more recent studies indicate a 1-hour inhalation LC50 near, but greater than, 2 mg/L. The Agency was unable to document the quality of the prior study or all study protocols. Therefore, the EPA is finalizing the listing of propoxur as a U-waste, rather than as a ''P'' list waste, and designating propoxur as U411.

In the case of bendiocarb, thiophanate-methyl, and thiodicarb, it was noted that the Agency had based its decision on 4-hour exposure studies rather than 1-hour exposure studies consistent with the toxicological criteria of 40 CFR 261.11(a)(2). The Agency has reevaluated each of the compounds LC50 (1-hour) inhalation toxicity and based on these and the other toxicological results presented in the proposal is finalizing these three substances as toxic rather than acute hazardous wastes.

TABLE 1.—LIST OF PROPOSED ACUTE HAZARDOUS WASTES BEING ADDED AS TOXIC HAZARDOUS WASTES

Hazardous waste No.	Toxic hazardous wastes—CAS name (common name in parentheses)	CAS No.
U278	1,3-Benzodioxol-4-ol, 2,2-dimethyl-, methyl carbamate (Bendiocarb)	22781–23–3
U409	Carbamic acid, [1,2-phenylenebis(iminocarbonothioyl)]bis-, dimethyl ester (Thiophanate-methyl)	23564–05–8
U410	Ethanimidothioic acid, N,N′-[thiobis[(methylimino)carbonyloxy]]bis-, dimethyl ester (Thiodicarb)	59669–26–0
U411	Phenol, 2-(1-methylethoxy)-, methylcarbamate (Propoxur)	114–26–1

The Agency believes that as proposed the generic listing descriptions may be overly broad. Therefore, the Agency is not finalizing at this time the four proposed generic U listings (U360 through U363). With regard to the generic listings, the Agency believes that each generic group exhibits significant toxicological properties either directly from the chemicals themselves or their potential degradation products and that the range of variability in these effects in each case may pose risks to human health and the environment. As a result, the Agency is not finalizing the generic U listings (U360 through U363) at this time, and will take comment at a future date on options to narrow the scope of the U360—U363 listings.

The Agency also evaluated the toxicological data for each waste proposed for addition to 40 CFR § 261.33(f). After review of the available toxicological data, 12 compounds were not considered to have adequate toxicological data or predicted toxicity values in the record to finalize these listings at this time. The Agency is deferring action on these 12 substances.

The Agency has performed a more rigorous quantitative structure activity relationship analysis (QSAR) to predict the aquatic toxicity of each of the 12 deferred chemicals. The results of the QSAR analysis supports the Agency's conclusion that carbamates, carbamoyl oximes, thiocarbamates, and dithiocarbamates are highly toxic to aquatic species. The results of these studies are presented in Table 2 and included in the Docket (see **ADDRESSES**). The Agency will present these studies and the methodology used for public

comment during a planned reproposal of the 12 deferred chemicals.

TABLE 2.—QSAR RESULTS FOR DEFERRED DISCARDED CHEMICAL PRODUCTS

Waste code	Toxic hazardous wastes CAS name (common name in parentheses)	CAS No.	Fish 96-h LD50 mg/L	Daphnid 48-h LC50 mg/L	Fish chronic value (ChV) mg/L	Daphnid chronic value (ChV) mg/L
U368	Antimony tris (dipentylcarbamodithioato-S,S')- (Antimony trisdipentyldithiocarbamate).	15890–25–2	0.09	0.35	0.004	0.01
U369	Antimony, tris[bis(2-ethylhexyl)carbamodithioato-S,S']-, (Antimony tris(2-ethylhexyl)dithiocarbamate).	15991–76–1	.....	.....	0.001	0.003
U370	Bismuth, tris(dimethylcarbamodithioato-S,S'-, (Bismuth tris(dimethyldithiocarbamate)).	21260–46–8	1.8	0.63	0.03	0.06
U371	Carbamic acid, [(dimethylamino)iminomethyl)] methyl, ethyl ester monohydrochloride (Hexazinone intermediate).	65086–85–3	190.0	30.0	20.0	3.0
U374	Carbamic acid, [[3-[(dimethylamino) carbonyl]-2-pyridinyl]sulfonyl]-phenyl ester (U9069).	112006–94–7	870.0	1000.0	90.0	100.0
U380	Carbamodithioic acid, dibutyl-, methylene ester	10254–57–6	.....	.....	0.01	0.06
U388	Carbamothioic acid, (1,2-dimethylpropyl) ethyl-, S-(phenylmethyl) ester (Esprocarb).	85785–20–2	3.9 ..... 0.46—Carp 28–d TSCA§ 8E 8379	3.9	0.40	0.40
U397	Lead, bis(dipentylcarbamodithioato-S,S')- (Lead, bis (dipentyldithiocarbamato)).	36501–84–5	0.07	0.29	0.003	0.008
U398	Molybdenum, bis(dibutylcarbamothioato)- di-.mu.-oxodioxodi-, sulfurized.	68412–26–0	4.0	1.7	0.20	0.25
U399	Nickel, bis(dibutylcarbamodithioato-S,S')- (Nickel dibutyldithiocarbamate).	13927–77–0	0.12	0.26	0.004	0.01
U405	Zinc, bis[bis (phenylmethyl) carbamodithioato-S,S']-(Zinc dibenzyldithiocarbamate).	14726–36–4	0.10	0.30	0.004	0.01
U406	Zinc, bis(dibutylcarbamodithioato-S,S')- (Butyl Ziram)	136–23–2	0.12	0.26 ..... 0.74—daphinid 48–h TSCA§ 8E 9739	0.004	0.01

V. Response to Comments

The Agency is responding in this preamble to the most significant comments received in response to both the notice of March 1, 1994 (59 FR 9808) and the single comment received on carbamates that were part of the ''Michigan List'' proposal [1] (49 FR 49784, December 21, 1984).

Other comments received by the Agency are addressed in the Response to Comments Background Document that is available in the docket associated with this rulemaking.

A. Scope of Listing

1. Definition of Carbamates

Many commenters were confused by the scope of the listings and found it difficult to determine whether their production processes and discarded products were in the scope of wastes included in the listings. Many commenters believed that the definition of a carbamates was too vague and that any number of compounds could be considered carbamates. Commenters requested that EPA specifically define each of the four generic classes of carbamate compounds (carbamates, carbamoyl oximes, thiocarbamates, and dithiocarbamates) along with the scientific rationale for each definition and to footnote the regulation with those definitions.

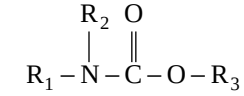
In the March 1, 1994, proposal (59 FR 9808), the Agency included the definition of carbamate in the engineering background document (F–94–CPLF–S0001). In response to comments that the categories are not sufficiently defined, EPA is providing additional clarification of the chemical characteristics of each of the specific groups listed above. A discussion of the term carbamate follows.

Chemical Definitions

Carbamates are salts or esters of carbamic acid. Today's regulations impact the production of chemicals of four distinct functionalities: carbamates, carbamoyl oximes, thiocarbamates, and dithiocarbamates. The production of chemicals in these four groups, comprise the ''carbamate industry'' studied by EPA in this rulemaking proceeding.

Carbamates

A carbamic acid ester is a compound that has the following structure:



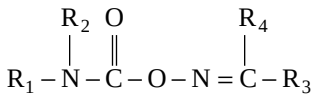
Where R_1 and R_2 can be identified as a hydrogen atom or any organic group beginning with a carbon sequence, and R_3 must be an organic group beginning with a carbon atom. The substitution of a metal cation at the R_3 position will result in a carbamate salt. Polyurethanes (i.e., polymers consisting of linked carbamate esters) are not within the scope of this rulemaking. Polyurethanes are large molecular structures which are unlikely to be bioavailable and which do not exhibit the toxicological

[1] In response to a petition for rulemaking filed by the State of Michigan, the EPA proposed to add 109 chemicals to the list of commercial chemical products that are hazardous when discarded.

properties of unlinked carbamate esters. For the purpose of this rulemaking, all salts or esters of carbamic acids with molecular weight less than 1000 daltons and/or Log octanol/water partition coefficient values of less than 8 are included.

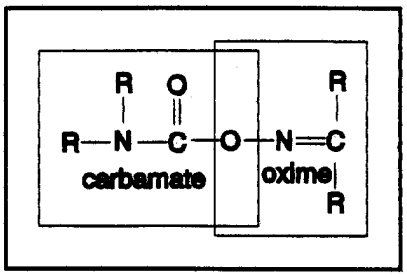
Carbamoyl Oximes

A carbamoyl oxime has the following chemical structure:



Carbamoyl oximes are a combination of the carbamate functionality and the oxime functionality. Oximes are characterized by the structure RO-N=C-R_1,R_2 where R_1 and R_2 can be a hydrogen or any organic group beginning with a carbon atom. The oxygen atom of the carbamate structure is used as a bonding point between the carbamate and oxime groups as shown in the following diagram:

BILLING CODE 6560–50–P

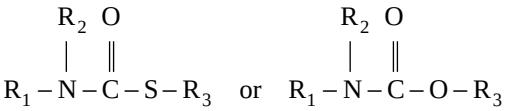


BILLING CODE 6560–50–C

For the purpose of this rulemaking, all salts or esters of carbamoyl oximes with molecular weight less than 1000 daltons and/or Log octanol/water partition coefficient values of less than 8 are included.

Thiocarbamates

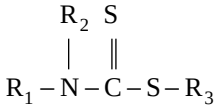
Thiocarbamates may be produced from the reaction of a carbamoyl chloride with a mercaptan and differ from carbamates by the substitution of either oxygen atom with a sulfur atom as shown in the following diagram:



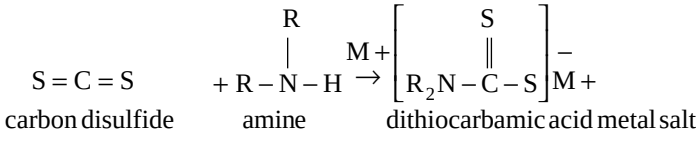
For the purpose of this rulemaking, all salts or esters of thiocarbamic acids with molecular weight less than 1000 daltons and/or Log octanol/water partition coefficient values of less than 8 are included.

Dithiocarbamates

The dithiocarbamate differ from carbamates in that each oxygen atom of the C(=O))O moiety is replaced with sulfur atoms. Dithiocarbamate esters have the following generic structure:

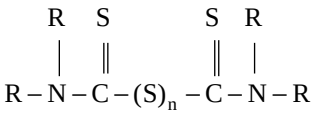


Dithiocarbamic acid is commercially important but is very unstable. As a result, it is often isolated as a metal salt. Usually, one or more hydrogen atoms on the amine function are replaced by an organic group. The following figure shows a typical reaction to produce a dithiocarbamic acid salt:



For the purpose of this rulemaking, all salts or esters of dithiocarbamic acids with molecular weight less than 1000 daltons and/or Log octanol/water partition coefficient values of less than 8 are included. Thiocarbamoylsulfenamides which are derivatives of dithiocarbamic acids are not subject to this rulemaking.

Both alkyl and ethylene dithiocarbamates can form salts with metal ions and both can be oxidized to the corresponding thiuram sulfides (bis(aminothiocarbonyl)sulfides). Mono, di, tri and tetra sulfides are known and are included in this rulemaking. Thiuram sulfides have the following generic structure:



These sulfides are the linkage of two dithiocarbamic acids and are classed as dialkyldithiocarbamates in this rule, because thiuram sulfides are known to

decompose to carbon disulfide, dialkylamine, and dialkyldithiocarbamate.

2. Listing Obligations

Commenters also took issue with the inclusion of all the four chemical types of carbamates under the scope of the statutory obligation of HSWA and that of the proposed consent decree in *EDF* v. *Browner* (Civ.No. 89–0598, District of Columbia Circuit).[2] Specifically commenters believed that thiocarbamates and dithiocarbamates should not be included with carbamates and that the listing determination should have been limited to the specific compounds identified in the proposed consent decree. Several commenters believe EPA is obligated only to make hazardous waste listing determinations for production wastes from those specific dithiocarbamates, thiram, ziram and ferbam, listed in the proposed consent decree. Other commenters believe that the scope of the listings should be limited to pesticide products.

Sections 3001(e) and 3001(b) give the Agency the authority to list any waste as hazardous provided it satisfies 40 CFR 261.11. Furthermore, Section 3001(e)(2) of RCRA as amended mandates that the Agency make a determination whether or not to list as hazardous wastes from the manufacture of carbamates. Since the statute gives no further definition of carbamates, it is left to the Agency to determine the scope of the wastes subject to the mandate. The Agency believes that the mandate was to make hazardous waste listing determinations for wastes generated from the manufacture of carbamates. Neither the congressional mandate nor the EDF consent decree limited the Agency's authority to consider the range of wastes subject to this rulemaking.

One commenter suggested that EPA limit the scope of the listings to wastes from the manufacture of pesticide products. The Agency disagrees with the commenter. The Agency's industry study focused on the four distinct groups of chemicals. This study was designed to evaluate the wastes from the production of these chemicals and the potential of the products to pose a hazard to human health or the environment when discarded. Thus, the end use of the product was not considered to be relevant, only the wastes. For dithiocarbamates which are used as both pesticides and rubber processing chemicals, the Agency found that the processes used, the wastes generated, the management practices, and the mismanagement scenarios were similar regardless of the end use. The Agency thus feels that regulating wastes from the production of dithiocarbamates without regard to end use is appropriate. For P and U listings, the Agency considered the toxicity of the material. The Agency feels that the end use is not an appropriate consideration because these listings regulate the disposal of the chemical as a waste.

3. Specific Substances

Commenters requested specific guidance in determining whether a given product fell within the scope of the listing. Commenters noted that the chemical definition of carbamate includes all salts and esters of carbamic acid. As such, commenters stated that carbamates could be viewed to include such substances as ammonium carbamate (a carbamic acid salt) and polyurethanes (polymers of linked carbamate ester structures). In order to narrow the scope of the proposed listing to the particular carbamate structures studied, it was suggested the Agency either list specific products to which the listing would apply, or restrict the listing applicable to pesticide products.

In response, the Agency believes the toxicity of carbamates, carbamoyl oximes, thiocarbamates, and dithiocarbamates to be a function of the bioavailability and reactivity of the chemicals as a waste, and therefore product use should not be a limiting factor, as bioavailable and reactive carbamates used for industrial purposes other than pesticides are assumed to have the potential to exhibit toxicity. With regard to the specific chemicals mentioned above, polyurethanes are large biologically unavailable molecules not within the scope of this rulemaking. Isotoic anhydride contains a -N-(C=O)-O- sequence, but chemically the substance is an acid anhydride and is not within the scope of this rulemaking. Furthermore, carbamates that are not isolated during production (i.e., transient intermediates and not removed from a process) are not included in the scope of the listing. Processes which include the brief formation of a carbamate intermediate which is not separated from the process or transported to another facility or process train and is converted to a non-carbamate is not included in the scope of the listing.

In the case of ammonium carbamate, the material is sold or transferred as a product for use in the production of urea. The Agency believes that wastewaters from the production of ammonium carbamate fall under the K157 listing unless they meet the specified exemption. The Agency also notes that ammonium carbamate is currently regulated as a CERCLA hazardous substance with a final reportable quantity (RQ) of 5000 pounds.

4. Definition of Production

Several commenters stated that the definition of production should be clarified to limit the rule to the chemical synthesis of a carbamate, carbamoyl oxime, thiocarbamate or dithiocarbamate as an isolated product and propose a definition that does not include operations which isolate non-carbamate product for which there is otherwise a commercial market. Several commenters also wanted clarification on whether wastes from use or formulation were included in the scope of the proposed listings.

In studying the carbamate manufacturing industry, the Agency analyzed current carbamate manufacturing processes. In order to focus the study, the Agency determined the raw materials, processes and reactions that were unique to the carbamate manufacturing industry. The Agency concludes that carbamate production begins with the synthesis of non-carbamate intermediates, chemicals which have no other use except for the production of a carbamate product or carbamate intermediate, and includes all subsequent processes involved with the production of the respective carbamate. Therefore, wastes from chemical processes which produce non-carbamate basic or specialty chemicals, which have multiple uses, are not subject to the K156–K161 hazardous waste listings. For example, wastes from the production of phosgene or methyl isocyanate which are used in numerous chemical production activities would not be included in the scope of the listing. In the case of non-carbamate intermediates, which have no other use but the production of carbamate intermediates or final products, wastes from the production of such intermediates would be subject to the listing. Such wastes are properly classified as carbamate production wastes and within the scope of RCRA § 3001(e)(3), regardless of whether or not the production occurred at the ultimate site of manufacture of the carbamate chemical. Thus, wastes from the production of bendiocarb phenol, A–2213 (intermediate in oxamyl production), and carbofuran phenol, all

[2] The Environmental Defence Fund (EDF) sued the Agency for *inter alic,* failing to meet the statutory deadlines of section 3001(e)(2) for making a hazardous waste listing determination for carbamates. The resulting consent decree (entered December 9, 1994) establishes a number of deadlines, including a January 31, 1995, deadline for this action.

of which are solely used for the production of carbamates, are within the scope of the listing.

Wastes from the use of carbamate products are not generated from the production of carbamates and, therefore, are not within the scope of the proposed listings. Also, wastewaters from the formulation of carbamate products into consumer products (i.e., the production of end use pesticide products) are not subject of the K156–K161 listings. The K listings regulate only wastes from the manufacture of the chemical ingredients.

5. Requests for Additions to the Listings

One commenter believed that the following wastes which EPA proposed not be listed should in fact be listed as hazardous:

Wastewater treatment sludges. The commenter believed that the wastewater treatment sludges from the production of carbamate and carbamoyl oximes contain high contaminant concentrations that warrant regulation. Specifically the commenter believed that concentrations of methylamine, trimethylamine and bis(2-ethylhexyl)phthalate, naphthalene, and 4-methylphenol were sufficiently high to warrant regulation of the sludges. The commenter believed that the risk modeling was flawed in that its exposure pathway assumptions understated the risks in the groundwater pathway and in the modeling techniques used.

Spent carbon. The commenter believes that chloroform is not the only constituent of concern in the spent carbons from the production of carbamates and states that the one sample taken by the Agency contained significant concentrations of methylene chloride, ethyl benzene and carbofuran. The commenter also believes that they should be listed because the listing criteria require EPA to list a waste as hazardous if it routinely exhibits a hazardous waste characteristic.

Wastewaters. The commenter believes that the Agency only considered mismanagement in tanks to result in only an air emission exposure pathway. The commenter believed that the Agency ignored spills or releases from tanks to surface waters or groundwater, and did not consider impacts to birds and other wildlife on direct contact with the wastewater, did not establish margins of safety to take into account lack of inhalation health-based standards, or take into account multiple sources of contaminants at carbamate facilities. They also believe that the surface impoundment should be considered a plausible management scenario because they are used at some carbamate facilities, and may be used in the future at new facilities. As well they believe that wastewaters from the production of thiocarbamates contain EPTC (Eptam) at greater than 100 times the health based level. They also state that process wastewaters from the production of dithiocarbamates contain levels of carbon disulfide that exceed applicable health standards and that scrubber waters prom the production of dithiocarbamates contain piperidine at significant concentrations.

Organic Wastes from Dithiocarbamate Production. The commenter disputes that fact that all of the organic wastes from Dithiocarbamate production are adequately managed as hazardous, because the F003 listing is not based on toxicity. The commenter maintains that these wastes should be listed as hazardous.

The Agency disagrees with the commenter on each the points raised. For wastewater treatment sludges, spent carbons, thiocarbamate and dithiocarbamate wastewaters, and dithiocarbamate organic wastes the Agency did not project significant human health or environmental risks as currently managed. EPA notes that the commenter did not provide accompanying exposure assessment and risk levels in their comment package. They merely state that high concentrations warrant regulation.

For wastewater treatment sludges, the Agency considered as plausible mismanagement the current management practices of management in tanks and subsequent disposal in landfills. No significant risks were attributable to these management scenarios. In the assessment of landfill management, model leachate concentrations were matched to analytical TCLP leachate concentrations. It is reasonable to calibrate model outputs to experimental measurements of actual leaching potential obtained using the Agency's Toxicity Characteristic Leaching Procedure (TCLP, 40 CFR 262, Appendix II), because these experimental measurements may more accurately predict the waste's leaching potential. This procedure was designed to approximate the leaching of wastes co-disposed with municipal wastes, therefore the Agency has utilized these experimental measurements in lieu of model projections of the leachate composition.

Based on the Agency's assessment, spent carbons from carbamate production where found to be characteristically hazardous as D022 (chloroform) and the risk assessment was dominated by risks attributed to chloroform. Absent the presence of chloroform, this waste would not satisfy the criteria for listing. While the commenter believes that all wastes which exhibit a characteristic should be listed, to implement hazardous waste management the Agency has put into place a two tiered system of characteristic and listed wastes. The U.S. Court of Appeals for the District of Columbia Circuit recently found in Natural Resources Defense Council v. EPA, 25 F.3d 1063 (District of Columbia Circuit 1994), that EPA is not compelled by its regulations to list a waste as hazardous because it exhibits a characteristic. The court found that EPA has the discretion to make a reasoned judgment as to under which system a waste should be managed. In this case, EPA has no information indicating that the current hazardous waste regulation of these spent carbons are inadequate. The Agency finds no need for redundant regulation, because risks are directly controlled by existing regulation.

In the case of wastewaters from thiocarbamate and dithiocarbamate production, the Agency determined that ''plausible mismanagement'' would be continued management in existing treatment systems comprised of tanks. The Agency does not view abandonment of existing treatment systems for unlined surface impoundments as ''plausible.'' The Agency believes that since the carbamate manufactures have already made a considerable investment in wastewater treatment systems using tanks, they will continue to use them. Furthermore, the Agency also believes permitting authorities are strongly biased against the permitting of new surface impoundments, due to the potential for such units to contaminate groundwater resources. This bias considerably lessens the likelihood of future surface impoundments.

In the current management scenario of tanks, the Agency does not project significant risks, and does not view the replacement of these tanks with other treatment units as plausible. The Agency was able to survey all U.S. producers of carbamates and could only identify the use of surface impoundments as polishing ponds after aggressive biological treatment in tanks. EPA's analysis indicated that the carbamate industry is unlikely to experience rapid and significant expansion and thus the development of significant new manufacturing sites and increased waste disposal is low. The EPA has, therefore, not listed these wastes as hazardous.

In response to the commenters claims that the Agency ignored spills or leaks from tanks, failed to consider wildlife impacts, establish safety margins to account for the lack of inhalation health-based standards or consider the multiple sources of contaminants, the Agency disagrees with each of the commenter's assertions. When assessing management of waste in surface impoundments, EPA included spills and overflows in the calculations. These were not accidental or catastrophic releases, but rather based on probabilities of overflows and spills. In the case of tanks, accidental release scenarios or catastrophic release scenarios were not considered as a potential basis for listing. Wastewater treatment tanks are excluded from RCRA permitting provisions (40 CFR 264.1(g)(6) and 265.1(c)(10)), and the product storage tank are excluded under 40 CFR 261.4(c). Therefore, RCRA currently does not impose containment standards. However, the EPA Administrator has authority under RCRA section 7003 to bring suit on behalf of the United States as may be necessary to stop any imminent and substantial endangerment to health or the environment.

EPA performed a screening analysis of the potential impacts on terrestrial species. However, the Agency is still developing methodologies for characterizing risk to terrestrial wildlife and endangered species, and believes that the analysis presented in the risk background document (F–94–CPLP–S0003) needs to be further refined.

The Agency calculated risks for each exposure pathway of significance and considered the potential cumulative risks of multiple exposures to the same toxic contaminates via multiple pathways. The Agency acknowledges that there may be other exposures resulting from such pathways as facility air emissions or consumer product use, and has attempted to quantify only those risks associated with solid waste management.

The organic wastes from the production of dithiocarbamates were found by the Agency to be composed largely of solvents regulated by the F003 and F005 hazardous waste listings. While F003 is only listed because of the characteristic of flammability, the Agency acknowledges that additional toxicity concerns have since been reported in a number of scientific studies. However, these solvents were not found to present significant risks when managed in tanks or from residual incinerator emissions. The Agency concludes that the existing regulation of F003 wastes within the context of the carbamate industry are protective of human health and the environment and that a separate listing designation would be redundant.

B. Listing Exemptions

1. K157 Exemption

Many commenters supported the K157 exemption as proposed because they felt it provided operational flexibility, incentives for waste minimization and an opportunity to overcome some of the difficulties created by managing listed wastes under the current rules. Some commenters also wanted clarification on the point of application of the exemption (i.e., where in the treatment process the determination is made as to whether or not the exemption level is achieved). Several felt that the compliance point should be downstream of strippers and other treatment systems. Several commenters also requested that compliance with the exemption be demonstrated using analytical testing.

The Agency feels that the appropriate compliance point for application of the K157 exemption is the point of generation prior to aggregation with other carbamate and non-carbamate waste streams. The Agency feels that if the point of exemption were after aggregation of the listed wastes with other wastes it would provide some incentive to selectively mix wastewater streams to meet the exemption criteria. By applying the concentration limit at the point of generation, it is likely that only the wastewaters that meet the criteria will be exempted. In addition, if the compliance point is moved to the exit of steam strippers and incinerators, storage tank and other treatment unit emissions would no longer be considered in the exemption determination.

With regard to testing, the Agency does not preclude the direct measurement of the maximum concentration of formaldehyde, methyl chloride, methylene chloride, and triethylamine using quantitative analytical methods to demonstrate the exemption requirements are met. However, the Agency concludes that end-of-pipe analytical demonstrations alone do not prove compliance with the exemption criteria. All waste treatment emissions must be considered. For example, an end-of-pipe test prior to mixing with other sources provides a rapid determination of the concentration of constituents in the wastewater being disposed. However, this single point-of-compliance does not demonstrate that constituents were not evaporated to the environment. A mass balance demonstration requires the facility to account for all of the materials introduced to the process showing amounts reacted, treated, recycled, and disposed. The accuracy of the mass balance approach is largely dependent on the process material records and accurate flow measurements during the production week. It is incumbent upon those claiming the exemption to provide documentation supporting the claim.

One commenter, however, believes that K157 waste should not be allowed an exemption because they believe the wastes exhibited one or more hazardous waste characteristics requiring listing, that air emission risk was well documented, and that because carbamate facilities are largely all RCRA permitted facilities, Agency resources would not be taxed by a change in the current exemption of wastewater treatment tanks from RCRA permitting and hence RCRA air emission controls.

The Agency disagrees. To implement hazardous waste management the Agency has put into place a two tiered system of characteristic and listed wastes. As discussed above, the D.C. Circuit Court recently found that EPA has the discretion to make a reasoned judgement as to under which system a waste should be managed. In the case of K157, the Agency believes that the same models used to calculate air emissions risks can also be used to determine a concentration at which this risk pathway has been abated such that unrestricted wastewater treatment could proceed. Thus, the Agency believes that the K157 exemption is warranted for those wastes that do not exceed the exemption limits. The Agency views any change to the current wastewater treatment unit exemption to be beyond the narrow scope of this hazardous waste listing determination. The Agency will further evaluate the regulatory status of wastewater treatment tanks in development of the Phase Four Land Disposal Restrictions Rule.

One commenter believes that EPA's method for determining the concentration of the constituents of concern may have ignored the benefit offered from various control devices for the volatile constituents. The commenter agrees that uncontrolled volatilized constituents should be included in the calculations; however, the commenter believes that the use of appropriate control devices for volatile constituents to capture or destroy the constituent should be part of the mass balance determination of regulatory status (i.e., whether or not the waste is exempt or not). As a result the commenter believes that the exemption should be amended to state that only

those hazardous constituents that cannot be demonstrated to be reacted in the process, recovered, or otherwise controlled should be included in the exemption calculation. The commenter also suggests that EPA consider credits or an exemption allowance for leak detection and repair programs which are currently in place and are part of the control process for carbamate production and K157 wastewaters.

The Agency agrees control devices for volatile constituents should be considered in the K157 wastewater exemption mass balance because there are valid control measures that prevent the release of the constituents to the environment, through recycling, or treatment. As a result the Agency is modifying the exemption to include the mass destroyed through treatment in the mass balance. The Agency believes that, while leak detection systems and repair programs are necessary to the safe and efficient management of wastes, these should be standard operating practices. Thus, the Agency believes that a credit or allowance for these management practices is not warranted.

One commenter believes that wastes are differentiated by treatability groups (wastewater or non-wastewater) while exemptions are by listing code. The commenter notes that wastes can change treatability group as a result of treatment, and requests clarification of EPA's intentions concerning K157 non-wastewaters generated through permissible switching of treatability groups when steam stripping generates wastewater bottoms (<1% total organic carbon, <1% total suspended solids) and non-wastewater overheads (>1% TOC). The commenter wishes to determine if K157 nonwastewaters derived as a result of steam stripping and then incinerated generating a K157 derived from wastewaters (scrubber waters) still meets the exemption.

Waste meeting the hazardous wastes listing descriptions of K156 and K157 are differentiated by their treatability group at the point of generation. Carbamate process wastes less than 1% total organic carbon (TOC) and less than 1% total suspended solids (TSS) are aqueous wastes designated as Hazardous Waste No. K157. Process wastes greater than 1% are designated as Hazardous Waste No. K156. Subsequent treatment does not change a waste's hazardous waste number. The commenter has described a case where K157 wastewaters are treated to separate an organic laden stream which is incinerated, and incinerator condensate returned for wastewater treatment. The Agency defines a hazardous wastes listing at the point of generation. In the case where wastewaters are removed from the process and subsequently treated, all the streams are derived from K157, and therefore all the streams are potentially exempt if a mass balance shows that the maximum weekly usage of formaldehyde, methyl chloride, methylene chloride, and triethylamine (including all amounts that can not be demonstrated to be reacted in the process, destroyed through treatment, or is recovered, i.e., what is discharged or volatilized) divided by the average weekly flow of process wastewater prior to any dilutions does not exceed a total of 5 parts per million by weight. If the facility can demonstrate that the amount of these constituents discharged or volatilized is less than 5 ppm then the K157 waste is exempt.

2. K156 Exemption

Several commenters believe that the exemption outlined in the K157 exemption should be expanded to include organic wastes from the production of carbamates and carbamyl oximes (i.e. K156 wastes). As an option some commenters believe the same approach should be extended to other carbamate K-listed wastes (e.g., incinerator scrubber blowdown). Specifically, one commenter noted that K156 scrubber water and steam stripping bottoms generally no longer contain VOCs and the carbamate component has been treated. They therefore believe that the proposed exemption should be modified to include K156 wastes which contain <5 ppm of methyl chloride, formaldehyde, triethylamine, and/or methylene chloride) if the wastes are treated in biological treatment systems. This commenter believes that without the exemption, the mixture and derived-from rule will force manufacturers to collect incinerator scrubber waters or stripper bottoms derived from treatment of K156 wastes for off-site management or collect all K156 organic wastes for off-site management. The commenters also believe that the lack of an exemption for K156 non-wastewaters equivalent to that for K157 wastewaters would result in needless off-site shipments of wastes.

The Agency has considered the expansion of the exemptions for other wastes proposed for listing. For untreated K156 wastes the Agency does not believe that it is appropriate to provide an exemption similar to K157 wastes. K156 wastes typically contain high concentrations of organic solvents such as xylene, methanol, methyl isobutyl ketone, toluene, acetone, and triethylamine and significant concentrations of such compounds as benomyl, carbendazim, carbaryl, and carbofuran. The Agency used a multipathway risk assessment and found that the constituents found in these wastes presented a risk to human health and the environment if the waste is improperly managed. Thus, the Agency does not feel an exemption for untreated K156 wastes is warranted.

The Agency believes, however, that some K156 wastes deserve the same type of exemption as K157 wastewater. Wastes derived from the treatment of K156 wastes such as incinerator condensate waters and other dilute wastes present risks similar to those from K157 wastewaters. For example, a carbamate process unit may generate an organic stream (i.e., >1% TOC) that is identified as K156. This material then undergoes incineration or steam stripping generating a wastewater stream (e.g., scrubber blowdown) with <1 % TOC. This wastewater is very similar in constituent type and concentration as a K157 waste yet carries the K156 designation as a result of the derived-from rule (40 CFR 261.3(c)(2)).

Commenters noted that these derived from wastes are currently managed in the same treatment systems used for K157 wastes, and that these are the same treatment systems sampled and evaluated by the Agency during it multipathway risk assessment. Because wastewater ''derived from'' K156 wastes contain pollutant levels which would be safe to undergo biological treatment are currently managed with the K157 wastewaters the Agency studied, the Agency has considered the expansion of the wastewater exemption to include wastewaters derived from the treatment of K156. The risks of concern the Agency measured for these units were from the volatilization of waste contaminants. Since the K156 derived from wastewaters have such similar properties and constituent concentrations and continue to be treated in tanks, the Agency concludes that these derived-from wastes deserve to be provided the same regulatory coverage as K157 wastes. Furthermore, the Agency believes that the lack of a similar exemption for K156 may reduce the incentives for source reduction by facilities. Source reduction practices would result in the production of smaller volumes of more concentrated wastes and these wastes would likely be K156 rather than K157.

The Agency has therefore added a concentration-based exemption for wastes derived from K156 wastes. The exemption reads:

§ 261.4(a)(2)(iv) * * *

(G) Wastewaters derived from the treatment of one or more of the following wastes listed in § 261.32—organic waste (including heavy ends still bottoms, light ends, spent solvents, filtrates, and decantates) from the production of carbamates and carbamoyl oximes (EPA Hazardous Waste No. K156).—Provided, that the maximum concentration of formaldehyde, methyl chloride, methylene chloride, and triethylamine prior to any dilutions into the headworks of the facility's wastewater treatment system does not exceed a total of 5 milligrams per liter.

Therefore, in order to be exempt, these K156 derived wastewaters would need to demonstrate that the emissions of formaldehyde, methyl chloride, methylene chloride, and triethylamine not exceed a total 5 ppm for environmental discharges and subsequent wastewater treatment. This exemption is different from the K157 exemption in that it is only for wastewaters (i.e., TSS<1% and TOC<1%) derived from the treatment of K156 and not for the generated K156 wastes themselves.

While in general commenters requested this extension of the exemption proposed for K157 wastes to also include similar wastewaters derived from the treatment of K156 wastes, one commenter did object to the proposed exemption, as noted above in section V.B.1. Because significant treatment will be necessary for these to meet the exemption criteria, and the Agency's sampling had included sludges derived from both K156 and K157 wastewaters, the Agency is confident that risks would not be increased by extending the exemption to wastes derived-from K156 wastes and is finalizing the above exemption in this rulemaking.

3. Wastewater Treatment Sludge Exemption

One commenter felt that since K156 scrubber water and steam stripping bottoms no longer contain VOCs and the carbamate component has been treated, that the K156 hazardous waste code should not apply to downstream biological treatment system sludges. The commenter therefore believes that the proposed biological treatment sludge exemption should be modified to include K156 wastes which contain <5 ppm of methyl chloride, formaldehyde, triethylamine, and/or methylene chloride) if the wastes are treated in biological treatment systems. The commenter believes that without the exemption, the mixture and derived-from rule will force manufacturers to collect incinerator scrubber waters or stripper bottoms derived from treatment of K156 wastes for off-site management or collect all K156 organic wastes for off-site management.

The Agency agrees with the commenter and has reevaluated its decision to exempt wastewater treatment sludges. During the industry study the Agency sampled wastewater treatment sludges that were derived from the treatment of K157 wastes as well as sludges derived from K156 wastes. The Agency performed a multipathway risk assessment on the sludges using the collected data and determined that they did not meet the criteria for listing presented in 40 CFR 261.11. The Agency is therefore expanding the scope of the exemption to include K156 derived from wastewaters. The exemption reads:

§ 261.3(c)(2)(ii) * * *

(D) Biological treatment sludge from the treatment of one of the following wastes listed in § 261.32—organic waste (including heavy ends still bottoms, light ends, spent solvents, filtrates, and decantates) from the production of carbamates and carbamoyl oximes (EPA Hazardous Waste No. K156), and wastewaters from the production of carbamates and carbamoyl oximes (EPA Hazardous Waste No. K157).

As noted in Section A.5 above, one commenter believed that wastewater treatment sludges contain high contaminant concentrations that warrant regulation. Specifically the commenter believed that concentrations of methylamine, trimethylamine and bis(2-ethylhexyl)phthalate, naphthalene, and 4-methylphenol were sufficiently high to warrant regulation of the sludges. Specifically, the commenter believed that total bis (2-ethylhexyl) phthalate was recorded in one sample as 22 mg/kg, compared to the health-based concentration of 0.006 mg/L; the samples contain 3,320 mg/L, and 4,600 mg/kg total methylamine, compared with aquatic LC50 concentration of 150 mg/L and the lethal dose for mice (subcutaneous) of 2,500 mg/kg; and one sample contained an estimated 15,000 mg/kg total trimethylamine. Concentrations of naphthalene and 4-methylphenol in the sludges also exceed health-based concentrations. The commenter also believed that the risk modeling was flawed in that its exposure pathway assumptions understated the risks in the groundwater pathway and in the modeling techniques used.

For wastewater treatment sludges, the referenced constituents while present, were not present in mobile forms above health-based levels or aquatic LC50. Specifically, methylamine was detected in RP–09 at 4.6 mg/kg and not 4600 mg/kg as the commenter noted. As well trimethylamine was found at 15 mg/kg and not 15,000 mg/kg as reported by the commenter. While some constituents in the solid wastes exceeded the health-based numbers, the constituents were not found to leach from the matrices. Only one leachate sample had bis 2-(ethylhexyl)phthalate (DL–05 TCLP (2 times the HBL)) present at a concentration that exceeded the health based number.

The Agency used these concentrations in the multipathway risk assessment and considered as plausible mismanagement the current management pathways of management in tanks and subsequent disposal in landfills. No significant risks were attributed to these management scenarios. The Agency believes that the management scenarios used in the risk assessment were appropriate because the industry is currently managing the sludges in this manner. In the assessment of landfill management, model leachate concentrations were matched to analytical TCLP leachate concentrations. The Agency calibrated model outputs to experimental measurements of actual leaching potential, and believes that it has accurately assessed the leaching potential of this wastestream. As a result the Agency does not believe listing of the wastewater treatment sludges is warranted and that the exemptions provide for these sludges is appropriate.

C. Basis for Listing and Decisions Not to List

One commenter believes that the K156 through K161 listings are based on mischaracterized waste streams. The commenter believes that in some cases identified constituents of concern come from non-carbamate processes and thus should not be used in evaluating the risk of carbamate waste streams. The commenter also believes that the Agency did not collect enough data to support this rulemaking and that EPA has based the proposed listing on constituents that are only proposed for addition to appendix VIII rather than those already on appendix VIII. Several commenters did not believe that the EPA demonstrated that the K156 through K161 wastes meet the listing criteria set out in 40 CFR 261.11. Commenters believe that the Agency misapplied the listing criteria by using inappropriate mismanagement scenarios to evaluate the hazards posed by the carbamate wastes. The commenters believed that the Agency should have used management scenarios which the waste would normally undergo. Specifically, the commenter believes that the Agency only used exposure

routes for pesticide use rather than routes for pesticide wastes.

In addition, several commenters believe that dithiocarbamates as a group and individual dithiocarbamates did not meet the listing criteria set out in 40 CFR 261.11. Specifically, several commenters felt the Agency has not demonstrated that dithiocarbamates meet the reactivity criteria of 40 CFR 261.23(a) (1), (2), (3), and (4) or the toxicity criteria of 40 CFR 262.11(a)(2).

The Agency believes that it has accurately characterized the waste streams generated by carbamate manufacturers. In some cases waste streams that resulted from the treatment of commingled streams from carbamate and non-carbamate streams were sampled and analyzed. This is because, at many facilities, carbamate manufacturing is only part of the production activities occurring. It is common (especially for wastewaters) at carbamate manufacturing facilities to commingle wastes prior to treatment and disposal. The Agency believes that when streams are commingled for the purpose of treating one with the other that it was appropriate to sample the commingled stream. For example, at Zeneca's Bucks, AL facility, the Agency analyzed several streams that result from the treatment of thiocarbamate wastes as well as other processes. These streams are derived from carbamate streams and it is appropriate to characterize these streams and consider them for listing as hazardous. Specifically, the benzene and toluene in the commingled streams from the non-carbamate processes at Zeneca are used to extract the thiocarbamates from the wastewater streams because thiocarbamates are extremely soluble in benzene and toluene. Thus, since the commingling of the waste streams also provides a treatment step for the thiocarbamate wastewaters, it was appropriate to include the commingled streams in the risk assessment and use this information during the listing determination. In addition, while some constituents of concern may not be from carbamate processes, these were never the sole driving force behind the listing decision. In the specific case of thiocarbamate wastes, high concentrations of thiocarbamate products are present and clearly pose the potential for damage to human health or the environment if not properly managed.

The Agency believes that it has collected sufficient information and data to support listing of the six K wastes. During the carbamate industry study, the Agency collected generation and management information from all carbamate manufacturers identified in the United States during 1991 using a RCRA Section 3007 survey. To supplement the data and information collected in the survey, the Agency visited nine carbamate facilities and collected waste samples at eight of these facilities. These facilities are representative of the carbamate industry and produce 55 percent by weight of all carbamates manufactured in the U.S. These eight facilities represent products that make up over 89 percent of overall carbamate production. The Agency collected and analyzed approximately 60 samples from these facilities. These samples were supplemented by 26 samples collected from carbamate facilities by the Office of Water during the development of the effluent guidelines for pesticide manufacturers. The Agency believes that the 86 samples are representative of the wastes generated by carbamate manufacturers and that these analyses, in addition to the information provided in the RCRA Section 3007 surveys, provide sufficient data to support this rulemaking.

The Agency also believes that it is acceptable to propose both additions to appendix VIII and appendix VII at the same time. The Agency believes that it has the basis for proposing additions to appendix VIII based on the presence of the constituents in carbamate wastes and their toxicity. In addition, the Agency took comments on the proposed additions to appendix VIII. There is nothing that prohibits the simultaneous hazardous waste listing and appendix VIII addition, provided that the Agency solicits and responds to public comment on both actions. The Agency believes that listing the wastes and making the additions to appendix VIII simultaneously is an efficient system for developing the regulations and allows for public participation. Simultaneous hazardous waste listing and addition to appendix VIII is a long-standing practice of the Agency. In addition, the Agency notes that the following constituents which are part of the basis for these hazardous waste listings were on appendix VIII at the time this rule was proposed: benzene, chloroform, methyl ethyl ketone, methylene chloride, pyridine, carbon tetrachloride, formaldehyde, and methyl chloride.

The Agency also believes that it has demonstrated that the K156 through K161 wastes meet the listing criteria of 40 CFR 261.11. The Agency considered each of the criteria outlined and determined that these wastes are capable of posing a substantial threat to human health and the environment when improperly treated stored, transported or disposed. The Agency disagrees with the commenter with regard to the management scenarios used in the listing determinations. The mismanagement scenarios that were used in the evaluation of carbamate wastes were not hypothetical, but were based on actual waste management practices currently used by the industry. Because these practices are, in fact, engaged in by the industry they are plausible management scenarios for these wastes. The Agency did not rely on pesticide use exposure routes and specific damage incidents as the sole basis for listing. Specific damage incidents involving pesticides were used as supporting documentation that carbamates can have a significant environmental impact if improperly disposed.

EPA believes that dithiocarbamate wastes pose significant risks to human health and the environment, because these materials are bioavailable and degradable and have the potential to exhibit significant aquatic toxicity, reproductive and neurological effects, and have the potential once released in the environment to form among other degradation products, carbon disulfide (a potent reproductive and neurological toxicant).

These risks specifically meet EPA's listing criteria as described in the preamble to the dyes and pigments listing determination (59 FR 66072, December 22, 1994). With regard to the toxicity of the dithiocarbamates, the Agency believes that in addition to the toxic effects of intact dithiocarbamates, the formation of toxic decomposition products is a major concern for dithiocarbamates. Dithiocarbamates exhibit risks as a result of the parent compound, metal ion, and daughter products. As presented in the proposed rule, dithiocarbamates exhibit acute aquatic toxicity in a narrow range for those compounds with available data (LC_{50} of 0.049 to 2.9 mg/L). As a chemical class dithiocarbamates exhibit reactive properties (i.e., react in water under ambient environmental pH conditions to form sufficient toxic gas, fumes, or vapors to either create a toxic or irritating atmosphere or to impart toxicity to the aqueous media are reactive wastes subject to existing hazardous waste regulation as Hazardous Waste No. D003 (40 CFR 261.23(a)(4))). Dithiocarbamates react under acidic conditions to form carbon disulfide, which has potent reproductive effects. One commenter supplied confidential studies showing that under pH 2 conditions over eight hours less than one percent of the dithiocarbamate products tested decomposed. The Agency calculates

from this data that the concentration of carbon disulfide formed in a hypothetical leaching test would be toxic even when assuming a 100 fold dilution/attenuation factor. Record sampling during the industry study has also found decomposition products such as methylisothiocyanate and n-nitrosodimethylamine in the wastes sampled. Methylisothiocyanate is reactive and toxic, and n-nitrosodimethylamine is a known carcinogen. In addition, once released into the environment dithiocarbamate metal salts degrade or exchange metal ions, producing free metals ions. Finally, the ability to form other toxic substituents was documented during a spill of metam sodium (a dithiocarbamate) that had catastrophic environmental impacts on the surrounding environment along a 45-mile stretch of the Sacramento River and portions of Lake Shasta. As a result, EPA believes that regulation of dithiocarbamate wastes as hazardous wastes is necessary because of the reactivity and aquatic toxicity of this class of chemicals.

D. Conflict With Other Regulatory Programs or Initiatives

Several commenters believe that EPA should not proceed with the listing because these wastes are, or will be regulated under Clean Water Act (CWA), Clean Air Act (CAA) and other provisions of RCRA. Furthermore, the commenters believe EPA should not add additional wastes to the listings until the issues regarding the definition of solid wastes resulting from the courts decision invalidating the mixture and derived-from rules in Shell Oil decision (Shell Oil v. EPA, 950 F.2d 751, D.C. Cir. 1991) have been resolved. Specifically, the commenter believes that the listings should be deferred until the rule resulting from the work of the Definition of Solid Waste Task Force and the Hazardous Waste Identification Committee are finalized because these may profoundly impact the regulatory classification of wastes. Another commenter believes residues from the treatment of listed wastes should be provided a de minimis exit from RCRA Subtitle C.

The Agency noted in the proposal that significant regulatory gaps currently exist between RCRA regulation of air emissions from hazardous waste management and the CAA regulation. Although future regulations are planned in these areas, the coverage and scope of future regulations is uncertain and does not act to mitigate existing risks. The Agency has determined that risks posed by carbamate waste management should be controlled through regulation under RCRA. Potential future regulation will be developed with consideration given to the then-existing regulatory scheme as well as the need to close any remaining regulatory gaps that are beyond the narrow scope of the carbamate listing determinations in this rulemaking. The Agency would also like to note that the HWIR rule is not designed to limit entry to the hazardous waste regulatory system but is a system where listed wastes may be able to be easily removed from the hazardous waste management system.

E. Constituents of Concern for Appendix VII

Some commenters believe that several constituents were included on appendix VII (i.e., the appendix that identifies the constituents of concern that are the basis for listing a waste) even though they were measured in the wastes at concentrations below health based levels in multipathway risk assessment. Commenters also believe that the format of listings is inconsistent with previous appendix VII listings. Specifically, the commenters believe that EPA has in the past listed only the metal or organic compounds directly related to the waste and none of the solvents which may be present. The commenters believe that appendix VII should only include the hazardous constituents that are specific carbamates, carbamoyl oximes, thiocarbamates and dithiocarbamates.

Wastes may be listed as hazardous if they contain toxic constituents identified in appendix VIII of 40 CFR part 261 and the Agency concludes, after considering eleven factors enumerated in section 261.11(a)(3), that the waste is capable of posing a substantial present or potential hazard to human health or the environment when improperly managed.

To determine whether a waste is hazardous for toxicity under 40 CFR 261.11(a)(3), EPA determines the presence of an appendix VIII constituent, regardless of concentration. EPA then examines all the health effects data on that constituent, along with other factors (generally related to exposure) required to be considered under 40 CFR 261.11(a)(3). Concentration of the hazardous constituent is among those factors (40 CFR 261.11(a)(3)(ii)). Other factors include the plausible types of mismanagement scenarios to which the wastes could be subjected and the potential of the constituent or any toxic degradation product to migrate from waste into the environment under the improper management scenarios (40 CFR 261.11(a)(3)(iii) and (vii). These factors are evaluated to decide whether to list the waste as a hazardous waste.

After determining that a waste should be listed as hazardous, EPA would then list in appendix VII the constituents that led to that listing. The Agency has reassessed each of the constituents listed as a basis of listing and has limited the hazardous constituents for the basis of listing to those constituents which were found to present health based or environmental risks in the multipathway analysis, and to toxic products present at percent levels which are potentially hazardous to human health and the environment. Therefore, the Agency has removed acetone, hexane, methanol, methyl isobutyl ketone, and xylene from the appendix VII basis of listing, because these substances were not significant in the risk analysis. The Agency has also corrected the basis of listing for K156 to include formaldehyde and the basis of listing K161 to include antimony and arsenic, because these constituents where significant in the risk assessment.

The commenters also believe that the terms thiocarbamates, Not Otherwise Specified (N.O.S.) and dithiocarbamates, N.O.S. are overly broad, include a variety of compounds for which EPA has not established health or environmental hazards, are not hazardous constituents on appendix VIII and are not proposed for inclusion on appendix VIII. Therefore, the commenter concludes that generic categories are inappropriate for inclusion in appendix VII listings. The Agency has deferred action on these generic categories, and may further address the addition of the generic categories to appendix VIII in a future proposal.

F. Constituents of Concern for Appendix VIII

Several commenters believe that many of the additions to appendix VIII (i.e., the appendix that contains a list of hazardous constituents to be evaluated for listing determinations (see 40 CFR 261.11)) were inappropriate. One commenter believes that the rule adds constituents to appendix VIII based on presence of a constituent rather than its concentration. Many commenters believe that constituents of concern should be limited to constituents that are present at concentrations that threaten human health and the environment. A commenter believes that constituents can only be added to appendix VIII if they are toxic, carcinogenic, mutagenic, or teratogenic to humans and other life forms and that the Agency has added constituents with

no toxicological data or incomplete toxicological data.

Waste constituent concentrations are not a factor in the addition of toxic substances to appendix VIII. The criteria for additions to appendix VIII (40 CFR 261.11(a)(xi)) direct the Agency to add substances ''shown in scientific studies to have toxic, carcinogenic, mutagenic or teratogenic effects on humans or other life forms.'' While the Agency has readily acknowledged some gaps in the available toxicity studies, the Agency need have but one scientific study meeting the § 261.11 criteria and in some cases developed empirical structural activity relationships (SAR) where direct toxicological testing was not available. Furthermore, the Agency views its SAR analysis as scientific studies for the purpose of adding substances to appendix VIII. Nevertheless, the Agency has reviewed the available toxicity data for each of the additions to appendix VIII and concludes that for 12 substances the toxicity data in the record is inadequate for final action. Final action on these 12 substances is being deferred to allow notice and comment on additional quantitative structure activity relationships (QSAR), developed for these chemicals. EPA plans to repropose these substances at a future date. The results of these new studies are presented in section IV.C.

Several commenters stated that EPA should not propose constituents for addition to appendix VIII at the same time that it is listing them as the constituents of concern for a hazardous waste listing. EPA believes it is proper to consider the expansion of appendix VIII and additional hazardous waste listings together. Constituents are added to appendix VIII if they have been shown in scientific studies to have toxic, carcinogenic, mutagenic, or teratogenic effects on human or other life forms. The Agency feels that each of the constituents being added to appendix VIII meets at least one of these criteria. The Agency solicited and received comments on the proposed additions to appendix VIII, and after considering these comments has concluded that the additions being finalized are appropriate. There is no regulation or statute that prohibits the simultaneous hazardous waste listing and appendix VIII addition. The Agency believes that listing the wastes and making the additions to appendix VIII simultaneously is efficient system for implementing the hazardous waste program that allows for meaningful public participation. Simultaneous listing and addition to appendix VIII is a long-standing practice of the Agency.

Several commenters believed the Agency proposed various additions to appendix VIII (including acetone, hexane, methanol, methyl isobutyl ketone, and xylene) without considering the far reaching impact on numerous exempt waste streams. Commenters felt that inclusion of these solvents on appendix VIII may affect the regulatory status of wastes at facilities not involved in production of carbamates because these solvents are so widely used throughout the chemical manufacturing industry and believe that the Agency has not considered the wide ranging impact of this action. Commenters also felt that the addition of these solvents to appendix VIII based on their toxicity contradicts the original classification of these solvents as hazardous due solely to ignitability in the F003 listing. Commenters believe that adding the toxic label to these solvents causing them to be considered toxic in addition to ignitable will expand corrective action implementation and may expand state restrictions based on blanket application of appendix VIII.

With regard to the solvents acetone, hexane, methanol, methyl isobutyl ketone, and xylene, commenters specifically requested clarification of whether or not these solvents, when discarded as F003 spent solvents, which were originally listed only basis of their ignitability, would now be considered toxic and hence no longer able to be exempt under 40 CFR 261.3(a)(2)(iii). This section of the CFR specifies that a waste is not a hazardous waste if it is a mixture of a solid waste and hazardous waste that is listed solely for one or more of the characteristics and the resultant mixture no longer exhibits the any of a hazardous wastes characteristics. Commenters believed the F003 wastes would now be both toxic and ignitable should the above solvents be listed in appendix VIII.

The Agency believes the addition of these solvents to appendix VIII would not have directly changed the regulatory management of F003 wastes. One commenter, however, correctly noted that the addition of these solvents to appendix VIII would eliminate the 264.340(b) exemption of incinerators, which burn only characteristically hazardous wastes, from trial burn requirements. This exemption allows incinerators that burn only characteristically hazardous wastes such as ignitable wastes do not need to analyze for these constituents as required in 40 CFR 264.31 or meet the closure requirements of 264.351. As noted in the previous section, the Agency has finalized only those substances which presented a hazard in the multipathway analysis. As a result, the Agency has not finalized the addition of the solvents acetone, hexane, methanol, methyl isobutyl ketone, and xylene. The Agency believes that the additions to appendix VIII as amended do not have this impact. The Agency also believes that changes to the current regulatory structure for F003 solvents and characteristic waste incineration are beyond the narrow scope of the carbamate listing determinations.

With regard to the expansion of state restrictions based on blanket application of appendix VIII and other changes in state requirements resulting from this rule, states are free to impose more stringent regulations at any time. The potential for state action beyond the minimum federal RCRA requirements are not controlled by the Agency.

G. P Listings

Several commenters challenged the basis for including several wastes as acutely hazardous wastes and presented additional toxicity data to support their position. As well, some commenters believe that the proposed P and U listings were not adequately supported by the administrative record.

After evaluation of comments received, four wastes (bendiocarb, thiophanate-methyl, thiodicarb, and propoxur), proposed for addition to 40 CFR 261.33(e) as acutely hazardous wastes, are instead being added to 40 CFR 261.33(f) as toxic wastes. In each case, the Agency found that these four wastes did not meet the § 261.11(a)(2) criteria for listing in § 261.33(e). The Agency disagrees with the commenter's assertion regarding the administrative record. The Agency criteria for including a waste on 40 CFR 261.33(e) are based on toxicity benchmarks that are clearly presented in 40 CFR 261.11(a)(2). The applicable toxicity data for the proposed wastes was presented in the proposed rule (59 FR 9808). As a result, the Agency contends that all the information used to make the listing decisions regarding P wastes was presented in the public record.

Only one comment was received relative to the carbamate wastes proposed in response to the 1984 Michigan Petition. Eight carbamate waste listings were proposed in response to a petition by the State of Michigan to include 109 chemicals to the lists in 40 CFR § 261.33 (49 FR 49784, December 21, 1984). This rule was never finalized. The petitioner argued that bendiocarb should be listed as a P-waste based on an oral mammalian toxicity of 34–64 mg/kg. The Agency agrees that bendiocarb's

toxicity is of concern. The Agency's benchmark for inclusion of a waste on 40 CFR § 261.33(e) is the oral LD50 for a rat of 50 mg/kg (see 40 CFR 261.11(a)(2)). The Agency has data that shows oral LD_{50} values of 64–119 mg/kg for female rat and 72–156 mg/kg for male rat. Based on these criteria the Agency is finalizing the listing of bendiocarb as U278.

H. U Listings

The criteria for designation of Acutely Hazardous Wastes found at 40 CFR 261.11(a)(2). While the listing criteria for these acutely hazardous wastes is clearly defined, commenters noted and requested a clear delineation of toxicological criteria for listing wastes as toxic under § 261.33(f).

While acute toxicity may be expressed in terms of numeric toxicological end points, such as oral LD50, inhalation LC50, and dermal LC50, the Agency does not have numeric criteria for listing commercial chemical products as toxic. However, the factors the Agency looks to in listing these materials are described in 40 CFR 261.11(a)(3). The Agency considered these factors including the toxicity of the various chemicals, in analyzing the potential to harm human and the environment. Based on this analysis, the Agency believes these discarded commercial chemical products meet the criteria expressed in § 261.11(a)(3) for listing a material as a hazardous waste. For further explanation, interested parties should refer to the background documents in the docket for this rulemaking. (See **ADDRESSES** section.)

In the case of carbamate, carbamoyl oxime, thiocarbamate, and dithiocarbamate chemicals, each class of compounds exhibits significant aquatic toxicity. Largely, the Agency's decision to list additional carbamate products was driven by available aquatic toxicity studies indicating LC50 values less than 50 mg/L. Because of the solubility, persistence, mobility, and toxicity of these classes of chemicals, the Agency concludes that they present a significant risk to the environment if mismanaged.

Several commenters believe that the generic listings for carbamates, carbamoyl oximes, thiocarbamates, and dithiocarbamates are vague, overly broad, and ambiguous. They believe the generic listings capture substances that are not hazardous and cause unnecessary burdens on manufacturers, distributors, and end users. The commenters also believe that the generic categories are inconsistent with current Department of Transportation (DOT) hazardous materials listings and should be modified to be consistent with these regulations. They felt that these listings would include a variety of compounds for which EPA has not established health or environmental hazards, are not hazardous constituents on Appendix VIII and are not proposed for inclusion on Appendix VIII. The commenters also believe that EPA is obligated to evaluate each chemical and waste stream individually to determine whether they meet the listing criteria and thus should not list generic wastes.

The Agency believes that the definition of each chemical group as amended is very clear and consistent with chemical nomenclature, such that generators of these wastes will be able to determine easily whether they manufacture a specific carbamate. Thus, the Agency does not believe that the definitions are ambiguous. The Agency understands that the generic categories designated as N.O.S are not identical to the categories in DOT regulations. The DOT regulations refer only to carbamate pesticides and thiocarbamate pesticides. The Agency does not feel that DOT regulation preclude a broader definition for the purposes of hazardous waste listing. However as previously stated, the Agency believes that generic N.O.S. categories as proposed may be overly broad and will defer finalizing the generic listing descriptions until alternative listing descriptions have been proposed and commented on.

I. Toxicity Information

Several commenters believe that EPA did not have adequate toxicity information to perform its risk assessment and believe that EPA's use of surrogates in determining toxicity of compounds is inappropriate. The commenter also believes EPA had insufficient risk data to promulgate the U listings. As well, commenters discovered differences between published toxicity information and that presented by the Agency in the proposed notice.

The Agency has reevaluated the toxicity data for each waste proposed for addition to 40 CFR § 261.33(f). As noted by commenters, several compounds had limited toxicological data. After review of the available toxicological data, 12 compounds are not considered to have adequate toxicological or predicted values in the record to finalize these 12 listings at this time. See section IV.C. The Agency is deferring final action on the 12 compounds, and may repose these substances at a later date.

J. Risk Assessment

The Agency received numerous comments on the risk assessment. Some commenters believe that the risk assessment was extremely conservative, while other commenters believe that the risks from carbamate wastes were understated. The Agency has chosen to address the general concerns on both of these positions with regard to the risk assessment in this preamble. Detailed responses to specific comments on the appropriateness of model parameters, modeling assumptions, and exposure scenarios are provided in the Response to Comments Background Document that is available in the docket associated with this rulemaking.

1. Comments Asserting That the Risk Assessment Understates Risk

Several commenters felt that the Agency's risk assessment substantially understated the risk posed by improper management of carbamate wastes because (1) some of the modeling parameters and data inputs are highly uncertain and (2) exposures from spills and other accidental releases were not considered.

The Agency believes that it's modeling approach addresses all of the most significant exposures to wastes from this industry. As described in the background document to this rule (F–CPLP–S0003) the risk assessment procedure for selecting modeling parameters and assumptions is designed to ensure that the high end of the distribution of the exposed population is protected.

With respect to spills and other accidental releases, the Agency did include spills and overflows from surface impoundments based on probabilities of these occurrences. For wastes managed in tanks and surface impoundments, the Agency did not evaluate the potential impacts of a single catastrophic release to nearby soil and surface waters. The Agency believes that the probability of these types of potential exposure events occurring are extremely low and are less determinative in the listing determination than the more likely exposure scenarios evaluated.

One commenter stated that EPA should not rely as much on information which is specific to the industry (such as waste disposal practices and location of facilities) in its risk assessment. Instead, according to this commenter, the Agency should conduct a more generic risk assessment which would consider a wider range of potential disposal practices and site parameters.

The Agency used a combination of generic risk assessment scenarios and information specific to this industry in characterizing risks for this listing determination. The Agency believes that the use of industry specific information

is appropriate if that information is available and reliable. In this case, the carbamate manufacturing industry is relatively well defined and stable, and therefore the industry specific inputs are appropriate to use. The use of this information allows the Agency to more accurately characterize risks, since it better describes actual existing and potential conditions.

One commenter stated that the Agency did not adequately address the potential for impacts on endangered species and other terrestrial wildlife.

The Agency did conduct a screening assessment of potential impacts on terrestrial wildlife and concluded that risks were not likely to be significant. This assessment is presented in the risk assessment background document (F–CPLP–S0003). The Agency does recognize that risk assessment methodologies for terrestrial wildlife are still very much under development and that it cannot definitively conclude that risks will not exist.

One commenter believes that EPA should not rely on central tendency or average estimates of risk (as opposed to high end or conservative estimates) in its listing determination. This commenter states that this reliance violates both RCRA and Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations).

The Agency relies primarily on high end risk estimates in its listing determinations. The central tendency estimates are used primarily to project overall population risks in some cases and to provide an indication of the variability in risk estimates.

2. Comments Asserting That the Risk Assessment Overstates Risk

Several commenters believe that the Agency's risk assessment overstated the risks presented by the carbamate waste streams. One commenter believes that EPA's use of a multi-pathway risk assessment methodology is premature.

The Agency believes that a multipathway approach is well established and is appropriate for this rulemaking. The Agency has been using multipathway analyses for a number of years in a number of its programs including the Superfund program, the sewage sludge regulations, pesticide risk assessments, risk assessments for hazardous waste combustion facilities, and previous listing determinations. As a result the Agency believes that the use of a multipathway approach is not premature and is appropriate for this rulemaking.

Another comment was that the Agency misapplied the listing criteria by using inappropriate mismanagement scenarios to evaluate the hazards posed by the carbamate wastes.

The Agency believes it has correctly selected plausible mismanagement scenarios to evaluate the hazards posed by the carbamate waste. Although not all wastes generated by the carbamate manufacturing industry are handled in the same way, by looking across the industry at all plausible management practices, the Agency selected both typical case and plausible mismanagement scenarios to represent possibilities for the management of carbamate wastes. It is possible that specific manufacturing facilities within the industry managed their wastes quite differently than the plausible mismanagement scenarios. However, in selecting the mismanagement scenarios, the Agency looked across the industry and identified practices which would present the highest risk and considered those as the mismanagement scenarios. All mismanagement scenarios used in this analysis are currently in use in the industry by at least one facility although not all.

Another comment was that the Agency used exaggerated or implausible exposure assumptions causing an overly conservative risk estimate which does not represent reality at any facility. The commenters suggest that the Agency should consider site specific risk assessments to support any regulatory action in this area.

The Agency disagrees that the risk assessment is based on inappropriate assumptions and that exposure scenarios are highly exaggerated. Specific parameter criticism are addressed in the comment response document available in the docket for this rule. (See Addresses.) In general, in identifying the location of receptors, the Agency collected land use data and well water use data around 8 carbamate manufacturing facilities believed to represent the range of different types and locations of facilities present in the United States. These data were then used to develop central tendency and high end estimates for where individuals may be exposed to releases of constituents from the waste stream managed. As pointed out in the risk assessment background document, even the high end risk calculations use average values for most parameters.

While the risk assessment results may not specifically apply to any particular facility, the Agency believes they are representative of potential high end risks. The Agency is unable to conduct full site specific risk assessments for all facilities because of the time and resources which would be required to collect and analyze all of the data which would be needed for each facility.

The Agency believes that the use of a generic risk assessment methodology combined with industry-specific information for parameter values is the best approach for determining whether or not a waste stream should be listed as hazardous. Site-specific assessments may mean that the Agency would list a waste stream as hazardous for one manufacturer while not hazardous for another. Such wastes may not be subject to hazardous waste control. The Agency is generally unable to predict and does not control how a waste will be managed and thus the waste may or may not be disposed at the point of generation and as such the exposure assumption may be very different than those at the specific site. Therefore, EPA currently believes that it is inappropriate to consider extensive site-specific factors when making listing decisions. The Agency's delisting program was developed to provide industry the opportunity to show that, on a waste-specific basis, its waste do not pose a hazard to human health or the environment. The Agency believes that delisting is an adequate mechanism for those who feel that wastes do not meet the hazardous waste criteria and exclude them from the hazardous waste management system.

Another comment is that the proposed rule is based on misclassification/characterization of waste streams because the use of generic composites resulted in overestimation of risk. The commenter also believes that the assessment was based on limited data sometimes using a maximum constituent concentration value to represent both average and worst case scenarios, and that measured values for concentrations of constituents in waste streams at specific sites do not match numbers used in generic risk assessment.

The Agency disagrees with the commenter with regards to the characterization of waste streams. The Agency did not use a maximum constituent concentration value to represent both average and worse case scenarios in its risk assessment. For some constituents, only one measured value existed and this measured value was used in the risk assessment. The labeling of tables in the risk assessment background document (F-CPLP-S0003) shows that this one value was entered in both columns for average and high end values. The concentrations in the waste stream as measured by the Agency or reported by the facility were

used in characterizing the waste. When there were several measured values for a constituent, the Agency averaged those values to get a central tendency value for characterizing the waste. It should be noted that the Agency did not characterize the waste streams on a site specific basis but developed generic characterizations for each waste stream based on data from several facilities. The Agency developed generic waste stream characterizations based on data from one or several facilities. These generic waste stream characterizations may not match on a one to one basis the constituents in any specific carbamate manufacturing facility's stream. However, the Agency believes that these generic characterizations provide a meaningful way of representing waste streams across an industry in which the waste will have high variability due to changes in manufacturing processes and products. The Agency believes that it will be infeasible to collect data on every waste stream generated by every carbamate manufacturing facility. Thus, the generic waste stream characterizations were used to capture the range of constituents that could exist in carbamate manufacturing wastes. The Agency also notes that the commenter did not provide any additional waste characterization data.

Another commenter believes that EPA fails to acknowledge the uncertainties associated with its risk conclusions. The Agency believes that it has adequately characterized the uncertainty in the risk analysis. The Agency attempted to characterize uncertainties in its risk assessment by providing both central tendency and a range of high end risk estimates for each pathway and exposure route for each waste group. The parameter uncertainties are presented as a range of values used for all input parameters.

One commenter believes that EPA did not provide sufficient record information to allow meaningful comment on the risk assessment assumptions. The Agency disagrees with the commenter's assertion that adequate documentation on the risk assessment was not available. All information on conducting the risk assessment and its assumptions are either included in the background document itself or in the reference cited, all of which are included in the docket.

K. CERCLA RQs

Several commenters believe that the Agency should have proposed adjusted RQs for the substances added to the CERCLA hazardous substances list instead of applying the statutory 1 lb RQ, and that adjusted RQs should be put in place at the same time that the final rule is promulgated. Commenters believe that the 1 lb RQ would cause unnecessary and expensive reporting requirements and that the Agency should suspend the effective date of this rule until RQs are adjusted. One commenter believed that the Agency should not place carbamate compounds on the U-list as a mechanism to achieve CERCLA listing and to trigger actions by emergency responders under CERCLA.

The Agency plans to propose adjusted RQs of the substances added to the CERCLA hazardous substances list. Section 102(b) of CERCLA requires that a 1 lb RQ be set for these newly identified hazardous substances. Until an adjustment is promulgated, the statutory 1 lb RQ for newly identified hazardous wastes will remain in effect. The Agency disagrees with the commenters assertion that the addition of carbamates to the U-list was designed to achieve CERCLA listing and trigger actions by emergency responders under CERCLA. The addition of substances to the U-list was governed solely by the concentration and toxicity of these materials and the criteria for listing at 40 CFR 261.11. Section 101(14) of CERCLA establishes that all newly identified RCRA hazardous wastes are also CERCLA hazardous substances. The Agency does, however view it as beneficial for emergency first responders to quickly identify the potential hazards of carbamate, carbamoyl oxime, thiocarbamate, and dithiocarbamate products and feels that quick identification of hazards may speed corrective measures to limit environmental damage or risks to human health.

L. Regulatory Impact Analysis

There were many commenters who felt that the Economic Impact Analysis (EIA) conducted was inadequate or flawed. In particular, commenters felt that the addition of the Appendix VIII constituents would have a much greater cost impact than shown in the EIA. Other commenters felt that the scope of the EIA underestimated the number of affected facilities in that it did not take into account suppliers, distributors and customers using the P, U and Appendix VIII materials. In addition, commenters felt that it did not account for costs associated with soil and debris remediation, indirect state and federal regulatory impacts and reporting requirements under CERCLA and EPCRA, and costs incurred due to the mixture and derived-from rules. Commenters also believed that the EIA assumed that wastes currently recycled would continue to be recycled. Others felt that the rules would cause competing non-carbamate chemicals to have a competitive advantage that would cause economic hardship to small carbamate manufacturers. Other commenters believe that the EIA was flawed because the Agency should have prepared an RIA.

In conducting its EIA, EPA examined all data submitted to it under its RCRA section 3007 survey of the carbamate production industry. EPA used this information to create a baseline scenario, or description of the current state of waste management in the industry. More important, EPA maintains that the 24 facilities analyzed for the EIA represents the entire universe of carbamate production facilities, and thus EPA is confident that its analysis is comprehensive. EPA then developed a post-regulatory scenario in which waste generators would comply with the RCRA regulations newly imposed as a result of this rule. In creating this post-regulatory scenario, EPA forecast the plausible, long-term management of the waste, and EPA calculated the waste management costs associated with this post-regulatory scenario. EPA maintains that it has correctly estimated the true, long-term costs associated with the management of carbamate production wastes resulting from the listing of new RCRA hazardous wastes even though compliance costs for any individual entity may be higher or lower than our estimate. The Agency does not consider the rule to have significant impacts and thus it does not require a full regulatory impact analysis.

EPA points out that the EIA was designed to assess the primary cost impacts associated with changes in management practices resulting from the RCRA hazardous listing of carbamate production waste. EPA believes that the addition of compounds to 40 CFR part 261 Appendix VIII will not materially affect the management of such wastes. All carbamate production facilities are currently permitted under RCRA. In addition, RCRA grants the Agency broad authority to respond to any imminent and substantial endangerment to human health and the environment posed by the past or present management of any solid waste (RCRA § 7003). In addition, because no other action has been taken by the Agency there will be no effect on the ''mixture and derived from'' exemption.

EPA acknowledges that there may be indirect effects as a result of this rulemaking. The EIA accounted for the costs of trial burns, monitoring equipment, personnel for monitoring, and other compliance related costs in incineration costs. In support of the

final rule, EPA identified some potential incremental costs for closure of abandoned surface impoundments. EPA also included the costs of handling and disposal of P and U wastes in the revised EIA and is confident that its analysis is comprehensive. EPA believes, however, that designation of these carbamates as P and U wastes will not result in significant costs for suppliers and customers because of the infrequent nature of waste generation.

As for the commenter's concern about POTW operators no longer accepting such waste, EPA notes that currently RCRA listed wastewater is routinely accepted for treatment by POTW operators and other CWA systems. EPA does not expect any significant problems in this area for generators of carbamate production wastes.

EPA also believes that the long-term economic impacts of changes to markets and product distribution will be minimal. EPA also rejects the assertion that farmers and other small business owners will file unnecessary reports as a result of this listing. The Agency believes that the agricultural sector is as sophisticated about complying with environmental requirements as any other sector.

EPA also believes that carbamate wastes presently being recycled should be able to continue to be recycled under RCRA exemption following the listing and that any administrative cost impacts associated with the listing would be small compared to other waste management costs.

EPA also points out that the scope of its EIA is limited to the effects of the Federal RCRA program. In its rulemakings, EPA is not able to account for actions taken by the states, tribes, municipalities, or other governmental entities. States are free to impose more stringent regulations at any time. In its rulemakings, EPA is not able to account for the variances between the federal and state programs.

M. Impact on Recycling and Reuse

Several commenters believe that the K listings and P and U listings will have a negative impact on established reuse and recycling program. Commenters were also concerned that the rule will have an adverse impact on product stewardship programs, especially return for refill programs for containers. The commenters believe that the final listings should exclude all wastewater generated as part of recycling operations and all residue returned as part of recycling program and all wastewaters generated in cleaning recycled containers.

The Agency does not foresee any adverse impact of K, P or U listings on container recycling programs. The scope of the K listings is limited to wastes from the production of the carbamate chemicals and does not include product container wash waters. Product container wash waters are subject to the P or U waste listings if discarded or mixed with other listed wastes. However, when returned to either a formulation process or the chemical production process these wash waters would not be solid wastes, because the material is used in an industrial process to make a product (§ 261.2(e)(i)), or is being returned to the original process without first being reclaimed (§ 261.2(e)(iii)).

The EPA does not believe regulation of P and U wastes will adversely impact the recycling. Several carbamates are largely formulated in aerosol containers which may be recycled for their scrap metal value. As recyclable scrap metal, empty aerosol containers are exempted from RCRA regulation (§ 261.6(a)(3)(iii)). However, aerosol containers that are not empty in accordance with § 261.7 and have contained P or U listed substances would be subject to hazardous waste regulation when discarded.

The EPA also does not foresee significant adverse impacts to return for refill programs. Containers that have held P or U regulated substances are hazardous waste when discarded if the container is not empty in accordance with the provisions of § 261.7. EPA views hazardous waste disposal requirements to encourage the return of the container by the public to such refill programs. Should containers, other than those which are empty, be disposed full compliance with all RCRA requirements would be triggered.

N. Executive Orders

Several commenters believed that the Agency did not comply with Executive Order 12866 Regulatory Planning and Review (58 FR 51735, October 4, 1993). EPA believes it has complied with all provisions of E.O. 12866. Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a ''significant regulatory action'' because of policy issues arising out of legal mandates. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations are documented in the public record. See F–94–CPLP–0006.

One commenter believes EPA failed to measure additional sources of contaminants with potential risk factors, and that these omissions are inconsistent with Executive Order 12898 Federal Action to Address Environmental Justice in Minority Populations and Low-income Populations, section 3–301(b), which provides that federal agencies should consider, whenever practicable and appropriate, multiple and cumulative exposures.

EPA believes it has complied with all provisions of E.O. 12898 (Environmental Justice). The Agency calculated risks for each exposure pathway of significance and considered the potential cumulative risks of multiple exposures to the same toxic contaminants via multiple pathways. The Agency acknowledges that there may be other exposures resulting from such pathways as facility air emissions or consumer product use, and has attempted to quantify only those risks associated with solid waste management.

O. Paperwork Reduction Act

One commenter believes that the Paperwork Reduction Act (PRA) requirements have not been met with respect to the proposed rule in that it believes the reporting requirements under CERCLA for releases constitutes information collection and this the rule should be submitted to OMB for review.

The proposed rule stated in error that this rule has no PRA requirements. However, this rule does not contain any new information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. Facilities will have to comply with the existing Subtitle C recordkeeping and reporting requirements for the newly listed wastestreams.

Release reporting required as a result of listing wastes as hazardous substances under CERCLA and adjusting the reportable quantities (RQs) has been approved under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., and has been assigned OMB control number 2050–0046 (ICR 1049, Notification of Episodic Release of Oil and Hazardous Substances).

P. Compliance Schedule

Several commenters believed that EPA has not provided the regulated community with adequate time to comply with the rulemaking and should allow additional time for compliance which may require capital projects. This final rule allows for six months for compliance with this rule consistent and is consistent with RCRA § 3010(b). A period of six months from the publication date of the listing is generally adequate time for the industry

to make arrangements for new waste management practices. The Agency realizes that some remedial activities such as the retrofit of surface impoundments may require a significantly longer compliance period. However, RCRA § 3004(j)(6)(A) allows a 4-year compliance period for surface impoundments to meet the Minimum Technology Requirement (MTR). The Agency views these as adequate periods for compliance to be implemented.

VI. Compliance and Implementation

A. State Authority

1. Applicability of Rule in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified states to administer and enforce the RCRA program within the state. (See 40 CFR part 271 for the standards and requirements for authorization.) Following authorization, EPA retains enforcement authority under sections 3007, 3008, 3013,and 7003 of RCRA, although authorized states have primary enforcement responsibility.

Before the Hazardous and Solid Waste Amendments of 1984 (HSWA) amended RCRA, a state with final authorization administered its hazardous waste program entirely in lieu of the Federal program in that state. The Federal requirements no longer applied in the authorized state, and EPA could not issue permits for any facilities located in the state with permitting authorization. When new, more stringent Federal requirements were promulgated or enacted, the state was obligated to enact equivalent authority within specified time-frames. New Federal requirements did not take effect in an authorized state until the state adopted the requirements as state law.

By contrast, under section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by the HSWA (including the hazardous waste listings finalized in this notice) take effect in authorized states at the same time that they take effect in non-authorized states. EPA is directed to implement those requirements and prohibitions in authorized states, including the issuance of permits, until the state is granted authorization to do so. While states must still adopt HSWA-related provisions as State law to retain final authorization. HSWA applies in authorized States in the interim. Today's rule is promulgated pursuant to section 3001 of RCRA (42 U.S.C. 6921). Therefore this rule has been added to Table 1 in 40 CFR 271.1(j), which identifies the Federal program requirements that are promulgated pursuant to HSWA and take effect in all States, regardless of their authorization status. States may apply for either interim or final authorization for the HSWA provisions in 40 CFR 271.1(j) Table 1, as discussed in the following section.

2. Effect on State Authorizations

Because this rule (with the exception of the actions under CERCLA authority) is promulgated pursuant to the HSWA, a state submitting a program modification is able to apply to receive either interim or final authorization under section 3006(g)(2) or substantially equivalent or equivalent to EPA's requirements. The procedures and schedule for State program modifications under 3006(b) are described in 40 CFR 271.21. It should be noted that all HSWA interim authorizations are currently scheduled to expire on January 1, 2003 (see 57 FR 60129, February 18, 1992).

Section 271.21(e)(2) of EPA's state authorization regulations (40 CFR part 271) requires that states with final authorization modify their programs to reflect federal program changes and submit the modifications to EPA for approval. The deadline by which the states must modify their programs to adopt this regulation is determined by the date of promulgation of a final rule in accordance with § 271.21(e)(2). Table 1 at 40 CFR 271.1 is amended accordingly. Once EPA approves the modification, the State requirements become RCRA Subtitle C requirements.

States with authorized RCRA programs already may have regulations similar to those in this rule. These State regulations have not been assessed against the Federal regulations being finalized to determine whether they meet the tests for authorization. Thus, a state would not be authorized to implement these regulations as RCRA requirements until state program modifications are submitted to EPA and approved, pursuant to 40 CFR 271.21. Of course, states with existing regulations that are more stringent than or broader in scope than current Federal regulations may continue to administer and enforce their regulations as a matter of State law.

It should be noted that authorized states are required to modify their programs only when EPA promulgates Federal standards that are more stringent or broader in scope than existing Federal standards. Section 3009 of RCRA allows states to impose standards more stringent than those in the Federal program. For those Federal program changes that are less stringent or reduce the scope of the Federal program, states are not required to modify their programs. See 40 CFR 271.1(i). This rule is neither less stringent than or a reduction in the scope of the current Federal program and, therefore, states would be required to modify their programs to retain authorization to implement and enforce these regulations.

B. Effective Date

The effective date of today's rule is August 9, 1995. As discussed above, since today's rule is issued pursuant to HSWA authority, EPA will regulate the management of the newly identified hazardous wastes until states are authorized to regulate these wastes. Thus, EPA will apply Federal regulations to these wastes and to their management in both authorized and unauthorized states.

C. Section 3010 Notification

Pursuant to RCRA section 3010, the Administrator may require all persons who handle hazardous wastes to notify EPA of their hazardous waste management activities within 90 days after the wastes are identified or listed as hazardous. This requirement may be applied even to those generators, transporters, and treatment, storage, and disposal facilities (TSDFs) that have previously notified EPA with respect to the management of other hazardous wastes. The Agency has decided to waive this notification requirement for persons who handle wastes that are covered by today's listings and have already (1) notified EPA that they manage other hazardous wastes; and (2) received an EPA identification number. The Agency has waived the notification requirement in this case because it believes that most, if not all, persons who manage these wastes have already notified EPA and received an EPA identification number. However, any person who generates, transports, treats, stores, or disposes of these wastes and has not previously received an EPA identification number must obtain an identification number pursuant to 40 CFR 262.12 to generate, transport, treat, store, or dispose of these hazardous wastes by May 10, 1995.

D. Generators and Transporters

Persons that generate newly identified hazardous wastes may be required to obtain an EPA identification number, if they do not already have one (as discussed in section VI.C, above). In order to be able to generate or transport these wastes after the effective date of this rule, generators of the wastes listed today will be subject to the generator requirements set forth in 40 CFR 262.

These requirements include standards for hazardous waste determination (40 CFR 262.11), compliance with the manifest (40 CFR 262.20 to 262.23), pretransport procedures (40 CFR 262.30 to 262.34), generator accumulation (40 CFR 262.34), recordkeeping and reporting (40 CFR 262.40 to 262.44), and import/export procedures (40 CFR 262.50 to 262.60). It should be noted that the generator accumulation provisions of 40 CFR 262.34 allow generators to accumulate hazardous wastes without obtaining interim status or a permit only in units that are container storage units or tank systems; the regulations also place a limit on the maximum amount of time that wastes can be accumulated in these units. If these wastes are managed in surface impoundments or other units that are not tank systems or containers, these units are subject to the permitting requirements of 40 CFR 264 and 265, and the generator is required to obtain interim status and seek a permit (or modify interim status or a permit, as appropriate). Also, persons who transport newly identified hazardous wastes will be required to obtain an EPA identification number as described above and will be subject to the transporter requirements set forth in 40 CFR part 263.

E. Facilities Subject to Permitting

1. Facilities Newly Subject to RCRA Permit Requirements

Facilities that treat, store, or dispose of wastes that are subject to RCRA regulation for the first time by this rule (that is, facilities that have not previously received a permit pursuant to section 3005 of RCRA and are not currently operating pursuant to interim status, might be eligible for interim status (see section 3005(e)(1)(A)(ii) of RCRA, as amended). In order to obtain interim status based on treatment, storage or disposal of such newly identified wastes, eligible facilities are required to provide notice under section 3010 and to submit a Part A permit application no later than August 9, 1995. Such facilities are subject to regulation under 40 CFR Part 265 until a permit is issued.

In addition, under section 3005(e)(3), not later than August 9, 1995, land disposal facilities newly qualifying for interim status under section 3005(e)(1)(A)(ii) also must submit a Part B permit application and certify that the facility is in compliance with all applicable groundwater monitoring and financial responsibility requirements. If the facility fails to submit these certifications and a permit application, interim status will terminate on August 9, 1995.

2. Existing Interim Status Facilities

Pursuant to 40 CFR 270.72(a)(1), all existing hazardous waste management facilities (as defined in 40 CFR 270.2) that treat, store, or dispose of the newly identified hazardous wastes and are currently operating pursuant to interim status under section 3005(e) of RCRA must file an amended Part A permit application with EPA no later than August 9, 1995. By doing this, the facility may continue managing the newly listed wastes. If the facility fails to file an amended Part A application by August 9, 1995, the facility will not receive interim status for management of the newly listed wastes, and may not manage newly identified hazardous wastes until the facility receives either a permit or a change in interim status allowing such activity (40 CFR 270.10(g)).

3. Permitted Facilities

Under regulations promulgated by EPA on September 28, 1988, (see 53 FR 37912), a hazardous waste management facility that has received a permit pursuant to section 3005 of RCRA and is ''in existence'' as a hazardous waste facility on the date for the newly listed wastes are first subject to regulation, may be eligible to continue managing the new wastes under 40 CFR 270.42(g) while steps necessary to obtain a permit modification to allow the facility to manage the wastes are taken. To continue to manage the newly listed hazardous wastes, eligible facilities must be in compliance with 40 CFR Part 265 requirements with respect to management of the newly listed wastes and submit a Class 1 modification request no later than August 9, 1995. This modification is essentially a notification to the Agency that the facility is handling the waste. As part of the procedure, the permittee must also notify the public within 90 days of submittal to the Agency. See 40 CFR 270.42(a).

The permittee must then submit a Class 2 or 3 permit modification to the Agency by 180 days after the effective date of the listing. A Class 2 modification is required if the newly listed wastes will be managed in existing permitted units or in newly regulated tank or container units and will not require additional or different management practices than those authorized in the permit. A Class 2 modification requires the facility owner to provide public notice of the modification request, a 60 day public comment period, and an informal meeting between the owner and the public within the 60-day period. The Class 2 process includes a ''default provision,'' which provides that if the Agency does not reach a decision within 120 days, the modification is automatically authorized for 180 days. If the Agency does not reach a decision by the end of that period, the modification is permanently authorized. See 40 CFR 270.42(b).

A Class 3 modification is required if management of the newly listed wastes requires additional or different management practices than those authorized in the permit or if newly regulated land-based units are involve. The initial public notification and public meeting requirements are the same as for Class 2 modifications. However, after the end of the 60-day public comment period, the Agency will develop a draft permit modification, open a public comment period of 45 days, and hold a public hearing if requested. There is no default provision for Class 3 modifications. See 40 CFR 270.42(c).

Under 40 CFR 270.42(g)(1)(v), for newly regulated land disposal units, permitted facilities must certify that the facility is in compliance with all applicable 40 CFR Part 265 ground-water monitoring and financial responsibility requirements no later than August 9, 1995. If the facility fails to submit these certifications, authority to manage the newly listed wastes under 40 CFR 270.42(g) will terminate on that date.

4. Units

Units in which newly identified hazardous wastes are generated or managed will be subject to all applicable requirements of 40 CFR 264 for permitted facilities or 40 CFR 265 for interim status facilities, unless the unit is excluded from such permitting by other provisions such as the wastewater treatment tank exclusions (40 CFR 264.1(g)(6) and 265.1(c)(10)), and the product storage tank exclusion (40 CFR 261.4(c)). Examples of units to which these exclusions could never apply include landfills, land treatment units, waste piles, incinerators, and any other miscellaneous units in which these wastes may be generated or managed.

5. Closure

All units in which newly identified hazardous wastes are treated, stored, or disposed after the effective date of this regulation that are not excluded from the requirements of 40 CFR 264 and 265 are subject to both the general closure and post-closure requirements of subpart G of 40 CFR 264 and 265, and

the unit-specific closure requirements set forth in the applicable unit technical standards subpart of 40 CFR 264 or 265 (e.g., subpart N for landfill units). Additionally, EPA recently promulgated a final rule that allows, under limited circumstances, regulated landfills, surface impoundments, or land treatment units to cease managing hazardous waste but to delay Subtitle C closure to allow the unit to continue to manage non-hazardous waste for a period of time prior to closure of the unit (see 54 FR 33376, August 14, 1989). Units for which closure is delayed continue to be subject to all applicable 40 CFR 264 and 265 requirements. Dates and procedures for submittal of necessary demonstrations, permit applications, and revised applications are detailed in 40 CFR 264.113 (c) through (e) and 265.113 (c) through (e).

VI. CERCLA Designation and Reportable Quantities

All hazardous wastes listed under RCRA and codified in 40 CFR 261.31 through 261.33, as well as any solid waste that exhibits one or more of the characteristics of a RCRA hazardous waste (as defined in Sections 261.21 through 261.24), are hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. See CERCLA Section 101(14)(C). CERCLA hazardous substances are listed in Table 302.4 at 40 CFR 302.4 along with their reportable quantities (RQs). RQs are the minimum quantity of a hazardous substance that, if released, must be reported to the National Response Center (NRC) pursuant to CERCLA § 103. In this rule, the Agency is listing the wastes in this action as CERCLA hazardous substances in Table 302.4 of 40 CFR 302.4. The RQ for each substance will be one pound as provided by statute for all newly designated hazardous substances until adjustment is made by regulation.

Reporting Requirements

Under section 102(b) of CERCLA, all hazardous substances newly designated under CERCLA will have a statutory RQ of one pound unless and until adjusted by EPA regulation. Under CERCLA section 103(a), the person in charge of a vessel or facility from which a hazardous substance has been released in a quantity that equals or exceeds its RQ must immediately notify the NRC of the release as soon as that person has knowledge thereof. The toll free number of the NRC is 1–800–424–8802; in the Washington, DC metropolitan area, the number is (202) 426–2675. In addition to this reporting requirement under CERCLA, section 304 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) requires owners or operators of certain facilities to report the release of a CERCLA hazardous substance to State and local authorities. EPCRA section 304 notification must be given immediately after the release of a RQ or more to the community emergency coordinator of the local emergency planning committee for each area likely to be affected by the release, and to the State emergency response commission of any State likely to be affected by the release.

Releases equal to or greater than the one-pound statutory RQ are subject to the reporting requirements described above, unless and until the Agency adjusts the RQs for these substances in a future rulemaking.

The Agency is currently working on a proposed rule to adjust the RQ values for the constituents in this rule. This rulemaking is on an expedited schedule in order to minimize the time between the effective date of this listing and the publication of the adjusted RQs. The Agency anticipates that the adjusted RQs for many of the hazardous constituents in this rule will be higher than the statutory one-pound RQ. Once the RQ adjustment rule is proposed the Agency will take the proposed adjusted RQs into consideration when contemplating an enforcement action. It is important to note that while the Agency does not generally focus its enforcement resources on cases that involve statutory RQs where adjusted RQs are being promulgated, the Agency may pursue an enforcement action based on the specific facts of a situation in a case where an RQ for a hazardous constituent has been exceeded. In deciding upon an enforcement action under CERCLA for failure to report a release that equals or exceeds an RQ, the Agency generally considers the following factors: The quantity and relative toxicity of the released substance, the actual or threatened human health hazard or environmental damage, the egregious nature of the responsible party, the impact of the type of violation upon the regulatory program, the expected deterrent effort of prosecution, and the status of the proposed RQ adjustment rulemaking.

TABLE 3.—ONE-POUND STATUTORY RQS FOR K, P, AND U WASTES

Waste code	Constituent of concern	Statutory RQ (pounds)
K156	benomyl, carbaryl, carbendazim, carbofuran, carbosulfan, formaldehyde, methylene chloride, triethylamine	1
K157	carbon tetrachloride, chloroform, formaldehyde, methyl ethyl ketone, methyl chloride, methylene chloride, pyridine, triethylamine.	1
K158	benomyl, carbendazim, carbofuran, carbosulfan, methylene chloride	1
K159	benzene, butylate, eptc, molinate, pebulate, vernolate	1
K160	benzene, butylate, eptc, molinate, pebulate, vernolate	1
K161	arsenic, antimony, cadmium, metam-sodium, ziram	1
P185	1,3-Dithiolane-2-carboxaldehyde, 2,4-dimethyl-, O-[(methylamino)carbonyl]oxime (Tirpate)	1
U278	1,3-Benzodioxol-4-ol, 2,2-dimethyl-, methyl carbamate (Bendiocarb)	1
P188	Benzoic acid, 2-hydroxy-, compd. with (3as-cis)-1,2,3,3a,8,8a-hexahydro-l,3a,8-trimethylpyrrolo[2,3-b]indol-5-yl methylcarbamate ester (1:1) (Physostigmine salicylate).	1
P189	Carbamic acid, [(dibutylamino)thio]methyl-, 2,3-dihydro-2,2-dimethyl-7-benzofuranyl ester (Carbosulfan)	1
P190	Carbamic acid, methyl-, 3-methylphenyl ester (Metolcarb)	1
P191	Carbamic acid, dimethyl-,1-[(dimethylamino)carbonyl]-5-methyl-1H-pyrazol-3-yl ester (Dimetilan)	1
P192	Carbamic acid, dimethyl-, 3-methyl-1-(1-methylethyl)-1H-pyrazol-5-yl ester (Isolan)	1
U409	Carbamic acid, [1,2-phenylenebis(iminocarbonothioyl)]bis-, dimethyl ester (Thiophanate-methyl)	1
P194	Ethanimidothioc acid, 2-(dimethylamino)-N-[[(methylamino)carbonyl]oxy]-2-oxo-, methyl ester (Oxamyl)	1
U410	Ethanimidothioic acid, N,N'-[thiobis[(methylimino)carbonyloxy]]bis-, dimethyl ester (Thiodicarb)	1
P196	Manganese, bis(dimethylcarbamodithioato-S,S')- (Manganese dimethyldithiocarbamate)	1
P197	Methanimidamide, N,N-dimethyl-N'-[2-methyl-4-[[(methylamino)carbonyl]oxy]phenyl]- (Formparanate)	1
P198	Methanimidamide, N,N-dimethyl-N'-[3-[[(methylamino)carbonyl]oxy]phenyl]-, monohydrochloride (Formetanate hydrochloride).	1

TABLE 3.—ONE-POUND STATUTORY RQS FOR K, P, AND U WASTES—Continued

Waste code	Constituent of concern	Statutory RQ (pounds)
P201	Phenol, 3-methyl-5-(1-methylethyl)-, methyl carbamate (Promecarb)	1
P202	Phenol, 3-(1-methylethyl)-, methyl carbamate (m-Cumenyl methylcarbamate)	1
P203	Propanal, 2-methyl-2-(methylsulfonyl)-, O-[(methylamino)carbonyl] oxime (Aldicarb sulfone)	1
P204	Pyrrolo[2,3-b]indol-5-ol, 1,2,3,3a,8,8a-hexahydro-1,3a,8-trimethyl-, methylcarbamate (ester), (3aS-cis)- (Physostigmine).	1
P205	Zinc, bis(dimethylcarbamodithioato-S,S′)-, (T-4)- (Ziram)	1
U364	1,3-Benzodioxol-4-ol, 2,2-dimethyl- (Bendiocarb phenol)	1
U365	1H-Azepine-1-carbothioic acid, hexahydro-, S-ethyl ester (Molinate)	1
U366	2H-1,3,5-Thiadiazine-2-thione, tetrahydro-3,5-dimethyl- (Dazomet)	1
U367	7-Benzofuranol, 2,3-dihydro-2,2-dimethyl- (Carbofuran phenol)	1
U280	Carbamic acid, (3-chlorophenyl)-, 4-chloro-2-butynyl ester (Barban)	1
U372	Carbamic acid, 1H-benzimidazol-2-yl, methyl ester (Carbendazim)	1
U373	Carbamic acid, phenyl-, 1-methylethyl ester (Propham)	1
U271	Carbamic acid, [1-[(butylamino)carbonyl]-1H-benzimidazol-2-yl]-, methyl ester (Benomyl)	1
U375	Carbamic acid, butyl-, 3-iodo-2-propynyl ester (3-iodo-2-propynyl n-butylcarbamate)	1
U376	Carbamodithioic acid, dimethyl-, tetraanhydrosulfide with orthothioselenious acid (Selenium, tetrakis(dimethyldithiocarbamate)).	1
U377	Carbamodithioic acid, methyl,- monopotassium salt (Potassium n-methyldithiocarbamate)	1
U378	Carbamodithioic acid, (hydroxymethyl)methyl-, monopotassium salt (Potassium n-hydroxymethyl-n-methyldithiocarbamate).	1
U379	Carbamodithioic acid, dibutyl, sodium salt (Sodium dibutyldithiocarbamate)	1
U381	Carbamodithioic acid, diethyl-, sodium salt (Sodium diethyldithiocarbamate)	1
U277	Carbamodithioic acid, diethyl-, 2-chloro-2-propenyl ester (Sulfallate)	1
U382	Carbamodithioic acid, dimethyl-, sodium salt (Sodium dimethyldithiocarbamate)	1
U383	Carbamodithioic acid, dimethyl, potassium salt (Potassium dimethyl dithiocarbamate)	1
U384	Carbamodithioic acid, methyl-, monosodium salt (Metam Sodium)	1
U385	Carbamothioic acid, dipropyl-,S-propyl ester (Vernolate)	1
U386	Carbamothioic acid, cyclohexylethyl-, S-ethyl ester (Cycloate)	1
U387	Carbamothioic acid, dipropyl-, S-(phenylmethyl) ester (Prosulfocarb)	1
U389	Carbamothioic acid, bis(1-methylethyl)-, S-(2,3,3-trichloro-2-propenyl) ester (Triallate)	1
U390	Carbamothioic acid, dipropyl-, S-ethyl ester (EPTC)	1
U391	Carbamothioic acid, butylethyl-, S-propyl ester (Pebulate)	1
U392	Carbamothioic acid, bis(2-methylpropyl)-, S-ethyl ester (Butylate)	1
U393	Copper, bis(dimethylcarbamodithioato-S,S′)- (Copper dimethyldithiocarbamate)	1
U394	Ethanimidothioic acid, 2-(dimethylamino)-N-hydroxy-2-oxo-, methyl ester (A2213)	1
U395	Ethanol, 2,2'-oxybis-, dicarbamate (Diethylene glycol, dicarbamate)	1
U396	Iron, tris(dimethylcarbamodithioato-S,S')-, (Ferbam)	1
U400	Piperidine, 1,1'-(tetrathiodicarbonothioyl)-bis- (Bis(pentamethylene)thiuram tetrasulfide)	1
U401	bis(dimethylthiocarbamoyl) sulfide (Tetramethylthiuram monosulfide)	1
U402	Thioperoxydicarbonic diamide, tetrabutyl (Tetrabutylthiuram disulfide)	1
U403	Thioperoxydicarbonic diamide, tetraethyl (Disulfiram)	1
U407	Zinc, bis(diethylcarbamodithioato-S,S′)- (Ethyl Ziram)	1

VIII. Executive Order 12866

Under Executive Order 12866 Regulatory Planning and Review (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affects in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interferes with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a ''significant regulatory action'' because of policy issues arising out of legal mandates. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations are documented in the public record.

IX. Economic Impact Analysis

This section of the preamble summarizes the costs and the economic impact analysis (EIA) for the carbamate hazardous waste listings. Based upon the EIA, the Agency estimates that the listing of the six carbamate production wastes discussed above may result in nationwide annualized costs of at least $900,000. The previous EIA is available in the regulatory docket entitled ''Economic Impact Analysis of the Identification and Listing of Carbamate Production Waste,'' January 27, 1994, (F–94–S0002). The EIA revised in response to comment is available in the regulatory docket and is entitled ''Economic Impact Analysis of the Identification and Listing of Carbamate Production Wastes,'' October 26, 1994.

A. Compliance Costs for Listings

The remainder of this section briefly describes (1) the universe of carbamate production facilities and volumes of carbamate production wastes in the 6 waste groups listed, (2) the methodology for determining incremental cost and economic impacts to regulated entities,

and (3) the regulatory flexibility analysis.

1. Universe of Carbamate Production Facilities and Waste Volumes

In order to estimate costs for the EIA, it was first necessary to estimate total annual generation of carbamate production wastes. The domestic carbamate production industry is composed of 64 chemical products produced by 20 manufacturers at 24 facilities. Total annual waste quantities generated by these facilities were derived from a 1990 survey of the carbamate production industry.

2. Method for Determining Cost and Economic Impacts

This section details EPA's approach for estimating the incremental compliance cost and the economic impacts attributable to the listing of carbamate production waste. Because the carbamate production industry is relatively small (only 20 manufacturers at 24 facilities in 1990), EPA was able to collect facility-specific information and estimate incremental costs at the waste stream level. The information used in this analysis was collected in 1990 under the authority of a RCRA section 3007 survey; the survey included engineering site visits, and sampling and analysis of waste streams.

Approach to the Cost Analysis

EPA's approach to the cost analysis for this rule was to compare the cost of current management practices, as reported in the 3007 survey of carbamate production facilities, with the projected cost of management to comply with the RCRA Subtitle C hazardous waste program. This difference in cost, when annualized, [3] represents the incremental annual compliance cost attributable to the rule.

Baseline or Current Management Scenario

Relying on survey responses and engineering site visits, EPA was able to determine the current (i.e., 1990) management practices for the handling and disposal of carbamate production wastes. Current management practices varied among facilities and waste streams, and included such practices as off-site incineration, deep-well disposal, on-site destruction in boilers, and off-site landfilling. These current management practices at each facility represent the baseline scenario of the analysis.

As part of the 3007 survey, EPA asked each facility to identify current costs for the management of carbamate production wastes. For this analysis, EPA has relied on and has not changed the industry's own waste-specific estimates concerning the cost of current management. EPA realizes that future events such as waste minimization efforts or increased demand for carbamate products may change waste generation volumes and, thus, future waste management costs.

Post-Regulatory Management Scenarios

In predicting how industry would comply with the listing of carbamate production waste as RCRA hazardous waste, EPA developed nine post-regulatory management scenarios, described below, that represent reasonable management reactions on the part of industry. EPA developed these post-regulatory management categories based on its knowledge of current waste management and the physical and chemical properties of the waste.

Unit costs for Subtitle C treatment (i.e., incineration) or land disposal, waste transportation between facilities, permit modifications, maintenance of contingency plans, manifesting and biannual reporting system (BRS) reporting are contained in Table 4 below. The total volume of waste affected by each waste management category described above are presented below in Table 5.

TABLE 4.—POST-REGULATORY WASTE MANAGEMENT UNIT COST ESTIMATES

	Cost (1992 $)	Source
Commercial hazardous waste incineration	$1,600 per metric ton	SAIC/ICF analysis.
Commercial hazardous waste landfill	$200 per metric ton	SAIC/ICF analysis.
Hazardous waste transportation	$0.27 per metric ton per mile if under 200 miles. $0.24 per metric ton per mile if over 200 miles.	SAIC analysis.
Class II on-site hazardous waste landfill permit modification [4]	$80,102	ICF analysis.
Class II on-site hazardous waste incinerator permit modification [5]	$40,585	ICF analysis.
Other class II on-site hazardous waste treatment permit modification	$7,476	ICF analysis.
Segregation of industrial Subtitle D waste	$10 per metric ton	EPA estimate.
Maintenance of contingency plan	$200 per facility per year	Source a.
Manifesting [5]	$36 per shipment	Sources b, c.
BRS reporting	$428 per facility per year	Sources c, d.

[4] Permit modification costs were assumed to be incurred no more than once for each type of treatment at each facility. These costs were annualized over 20 years using a discount rate of 7 percent.

[5] Manifest completion costs were assumed to be incurred once a year for each waste shipped off site. One shipment was assumed to equal one truckload of 20 tons.

Sources: a. ''Estimating Costs for the Economic Benefits of RCRA Non-compliance,'' Draft Report prepared by DPRA for Office of Waste Programs Enforcement, U.S. Environmental Protection Agency, May 1993.

b. ICF No. 801 ''Requirements for Generators, Transporters, and Waste Management Facilities Under the RCRA Hazardous Waste Manifest System,'' June 15, 1992.

c. Employment and Earnings, Bureau of Labor Statistics, March 1993.

d. ''1991 Hazardous Waste Report,'' U.S. Environmental Protection Agency.

[3] Costs are discounted at a rate of 7 percent over a 20 year period.

TABLE 5.—TOTAL CARBAMATE PRODUCTION WASTE QUANTITIES AND TOTAL INCREMENTAL ANNUAL COST INCURRED BY EACH POST-REGULATORY WASTE MANAGEMENT CATEGORY

Post-regulatory waste management scenario	Total quantity of carbamate production waste affected (in metric tons)	Total annualized incremental cost incurred
MC 1	234,000	$25,600
MC 2	6,400	8,200
MC 3	1	700
MC 4	809,900	776,700
MC 5 and 6	2,700	200
MC 7	0	20
MC 8 and 9	240	68,100
MC 10	4,100	41,000
Total[a]	840,000	910,000

[a] Numbers may not add due to rounding.

Specific Analysis of K157 Wastewaters

EPA examined two scenarios for the post-regulatory management of K157 wastewaters that do not meet the concentration-based exemption. The first scenario assumed that K157 wastewaters would continue to be sent through NPDES-permitted discharges or to POTWs, but that (1) sludge would be managed as hazardous waste, and (2) surface impoundments would be closed and converted to tanks. The second scenario assumed that wastewaters would be treated by steam stripping before discharge into centralized wastewater treatment systems.

For the first K157 wastewater scenario, EPA reviewed the information collected as part of the RCRA section 3007 survey. The facility-specific information shows that only two facilities employ operational surface impoundments (as of 1990). EPA calculated the costs associated with the closure of the surface impoundments and conversion to tanks. The EIA technical background document contains details of these cost calculations. EPA estimated that the costs associated with the first scenario to be approximately $760,000 per year.

For the second K157 wastewater scenario, EPA explored the possibility of off-site steam stripping as well as constructing on-site steam stripping units. EPA calculated rough engineering cost estimates for the on-site systems, both for capital costs and annual operation and maintenance. For volumes generated by these facilities (approximately 400 tons), EPA estimated the total annualized cost of off-site steam stripping[6]. The total estimated annualized cost for scenario two is $6.4 million.

Because the K157 incremental annualized cost of scenario two is more than eight times that of scenario one, EPA assumed that industry would minimize its cost by adopting the lower-cost management[7]. The costs estimated for scenario one have been used in the total costs for K157 wastes reported below.

3. P and U List Wastes

EPA has obtained its estimate of the amount of P and U wastes generated annually by the carbamate producers from the 1990 RCRA Section 3007 Survey. The $10,000 cost associated with managing the 40 metric tons reported in the survey represents a lower-bound cost because it does not include wastes generated by pesticide formulators or distributors.

4. Potential Remedial Action Costs

In addition to carbamate process wastes, the carbamate hazardous waste listing could affect the management of soils, ground water, and other remedial materials. The Agency's ''contained in'' policy defines certain remediation wastes ''containing'' a listed hazardous waste as a RCRA hazardous waste (See *Chemical Waste Management* v. *EPA*, 869 F.2d 1526, D.C.C, 1989). Sites, where in newly identified hazardous wastes have been managed prior to the effective date of the new listings, may still have contaminant concentrations which exceed ''contained in'' levels. A person who actively manages such material could become a generator of RCRA hazardous waste. The likelihood of this imposing a significant additional burden is low since at least 22 of 24 carbamate production facilities are already permitted TSDFs. Releases from all solid waste management units at these TSDFs, including those that in the future would be found to contain a waste meeting the carbamate listing descriptions, are already covered by facility-wide corrective action under 40 CFR 264.101. These associated costs e.g., RCRA Facility Assessment have already been accounted for in the regulatory impact analysis of the corrective action rule.

One corrective action-related cost that should be accounted for is the possible clean up cost associated with the out-of-service surface impoundment that become solid waste management units following their replacement with tanks. In the worst-case, facilities generating K157 wastewaters will meet the concentration-based exemption and will abandon their surface impoundments following this listing. To calculate the corrective action costs, EPA has assumed clean closure in year one, with costs annualized over 20 years. To the clean closure costs, EPA has added the value of the abandoned land. Under these assumptions, annualized corrective action costs associated with this rule making total $472,000. If, however, the K157 wastewaters and all wastewaters derived from the treatment of K156 and comanaged with K157 wastes qualify for the concentration-based exemption, the corrective action costs are reduced to $12,000 annually.

5. Summary of Results

Table 6 presents a summary of estimated national incremental annualized compliance costs, by newly identified hazardous waste number, associated with this rule.

TABLE 6.—ANNUALIZED INCREMENTAL COMPLIANCE COST FOR THE LISTING OF CARBAMATE PRODUCTION WASTES LISTED BY CORRESPONDING RCRA CODES

RCRA waste code	Annual incremental compliance cost
K156	$14,000
K157	10,000–770,000
K158	37,000
K159	1,200
K160	2,100
K161	61,000
P & U	10,000
Total	140,000–900,000[a]

[a] Figures may not sum exactly because of rounding. Corrective action may add $12,000 to the lower bound costs and $472,000 to the upper bound costs.

X. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980 requires federal agencies to consider ''small entities'' throughout the regulatory process. Section 603 of the RFA requires an initial screening analysis to be performed to determine whether small entities will be affected by the regulation. If affected small entities are identified, regulatory alternatives must be considered which mitigate the potential impacts. Small entities as described in the Act are only those ''businesses, organizations and

[6] Recent vendor quotes of off-site steam-stripping showed a cost of $0.75 per gallon (approximately $200 per metric ton).

[7] EPA also considered facility specific comparisons between scenarios one and two. It should be noted that, under scenario one, given the worst possible case (conversion of three surface impoundments, one tank cover and sludge disposal) costs were still favorable to those that would be incurred by the same facility under scenario two.

governmental jurisdictions subject to regulation.''

If, however, the head of the Agency certifies that the rule will not have a significant impact on a substantial number of small entities, no regulatory flexibility analysis is required.

Table 7 presents the estimated annualized incremental compliance costs borne by the five small businesses [8] in the carbamate production industry. The annual incremental cost of the rule for the five facilities ranged from $628 to $772. The greatest ratio of compliance cost to sales is 0.01%, thus, EPA concluded that no small businesses are significantly affected by this rule.

TABLE 7.—RESULTS OF THE REGULATORY FLEXIBILITY ANALYSIS

Facility	Annual incremental cost of rule	Annual sales (millions)	Annual cost of compliance/annual sales (percent)
1	$772	$17.8	<0.01
2	628	110	<0.01
3	664	6.6	0.01
4	628	45	<0.01
5	736	19	<0.01

Of the 24 entities which are directly subject to this rule, 18 entities would incur incremental compliance costs. Of the 18 affected facilities, 4 entities fit the definition of a ''small entity'' as defined by the Regulatory Flexibility Act.[9] The annual incremental cost impact to these 4 entities ranges from $600 to $800. For each of the 4 facilities impacted, these annual costs constitute less than 1 percent of total annual sales. EPA believes that these costs do not represent a significant impact. Hence, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), ''the Administrator certifies that this rule will not have a significant economic impact on a substantial number of entities.''

XI. Paperwork Reduction Act

This rule does not contain any new information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* Facilities will have to comply with the existing Subtitle C recordkeeping and reporting requirements for the newly listed wastestreams.

To the extent that this rule imposes any information collection requirements under existing RCRA regulations promulgated in previous rulemakings, those requirements have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and have been assigned OMB control numbers 2050–120 (ICR no. 1573, Part B Permit Application); 2050–120 (ICR 1571, General Facility Standards); 2050–0028 (ICR 261, Notification to Obtain an EPA ID); 2050–0034 (ICR 262, Part A Permit Application); 2050–0039 (ICR 801, Hazardous Waste Manifest); 2050–0035 (ICR 820, Generator Standards); and 2050–0024 (ICR 976, Biennial Report).

Release reporting required as a result of listing wastes as hazardous substances under CERCLA and adjusting the reportable quantities (RQs) has been approved under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and has been assigned OMB control number 2050–0046 (ICR 1049, Notification of Episodic Release of Oil and Hazardous Substances).

List of Subjects

40 CFR Part 261

Environmental protection, Hazardous materials, Waste treatment and disposal, Recycling.

40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business infirmation, Hazardous material transportation, Hazardous waste, Indians-lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

40 CFR Part 302

Environmental protection, Air pollution control, Chemicals, Emergency Planning and Community Right-to-Know Act, Extremely hazardous substances, Hazardous chemicals, Hazardous materials, Hazardous materials transportation, Hazardous substances, Hazardous wastes, Intergovernmental relations, Natural resources, Pesticides and pests, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control, Water supply.

Dated: January 31, 1995.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, amend title 40 of the Code of Federal Regulations as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. Section 261.3 is amended by removing the period at the end of paragraph (a)(2)(iv)(E) and adding a semi-colon and the word ''or'' and by adding paragraphs (a)(2)(iv)(F), (a)(2)(iv)(G) and (c)(2)(ii)(D) to read as follows.

§ 261.3 Definition of hazardous waste.

(a) * * *

(2) * * *

(iv) * * *

(E) * * *; or

(F) One or more of the following wastes listed in § 261.32—wastewaters from the production of carbamates and carbamoyl oximes (EPA Hazardous Waste No. K157)—Provided that the maximum weekly usage of formaldehyde, methyl chloride, methylene chloride, and triethylamine (including all amounts that can not be demonstrated to be reacted in the process, destroyed through treatment, or is recovered, i.e., what is discharged or volatilized) divided by the average weekly flow of process wastewater prior to any dilutions into the headworks of the facility's wastewater treatment system does not exceed a total of 5 parts per million by weight; or

(G) Wastewaters derived from the treatment of one or more of the following wastes listed in § 261.32—organic waste (including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates) from the production of carbamates and carbamoyl oximes (EPA Hazardous Waste No. K156).—Provided, that the maximum concentration of formaldehyde, methyl chloride, methylene chloride, and triethylamine prior to any dilutions into the headworks of the facility's wastewater treatment system does not exceed a total of 5 milligrams per liter.

* * * * *

(c) * * *

(2) * * *

(ii) * * *

(D) Biological treatment sludge from the treatment of one of the following wastes listed in § 261.32—organic waste

[8] A small business is defined by the Small Business Size Regulations (13 CFR part 121) as one with under 500 employees.

[9] According to ''EPA Guidelines for Implementing the Regulatory Flexibility Act'' (April, 1992), any producer of pesticides and agricultural chemicals (SIC 2879) with less than 500 employees constitutes a ''small entity.'' None of the entities which would incur incremental compliance costs as a result of this proposal have less than 500 employees.

(including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates) from the production of carbamates and carbamoyl oximes (EPA Hazardous Waste No. K156), and wastewaters from the production of carbamates and carbamoyl oximes (EPA Hazardous Waste No. K157).

* * * * *

3. Section 261.32 is amended by adding in alphanumeric order (by the first column) the following waste streams to the subgroup 'Organic chemicals' to read as follows.

§ 261.32 Hazardous waste from specific sources.

* * * * *

Industry and EPA hazardous waste No.	Hazardous waste	Hazard code
*	*	*
Organic Chemicals:		
*	*	*
K156	Organic waste (including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates) from the production of carbamates and carbamoyl oximes.	(T)
K157	Wastewaters (including scrubber waters, condenser waters, washwaters, and separation waters) from the production of carbamates and carbamoyl oximes.	(T)
K158	Bag house dusts and filter/separation solids from the production of carbamates and carbamoyl oximes	(T)
K159	Organics from the treatment of thiocarbamate wastes	(T)
K160	Solids (including filter wastes, separation solids, and spent catalysts) from the production of thiocarbamates and solids from the treatment of thiocarbamate wastes.	(T)
K161	Purification solids (including filtration, evaporation, and centrifugation solids), bag house dust and floor sweepings from the production of dithiocarbamate acids and their salts. (This listing does not include K125 or K126.).	(R,T)

* * * * *

4. The tables in § 261.33(e) and (f) are amended by adding in alphabetic order (by the third column) the following substances to read as follows:

§ 261.33 Discarded commercial chemical products, off-specification species, container residues, and spill residues thereof.

* * * * *

(e) * * *

Hazardous waste No.	Chemical abstracts No.	Substance
*	*	*
P203	1646–88–4	Aldicarb sulfone.
*	*	*
P127	1563–66–2	7-Benzofuranol, 2,3-dihydro-2,2-dimethyl-, methylcarbamate.
P188	57–64–7	Benzoic acid, 2-hydroxy-, compd. with (3aS-cis)-1,2,3,3a,8,8a-hexahydro-1,3a,8-trimethylpyrrolo[2,3-b]indol-5-yl methylcarbamate ester (1:1).
*	*	*
P189	55285–14–8	Carbamic acid, [(dibutylamino)- thio]methyl-, 2,3-dihydro-2,2-dimethyl- 7-benzofuranyl ester.
P191	644–64–4	Carbamic acid, dimethyl-, 1-[(dimethyl-amino)carbonyl]- 5-methyl-1H- pyrazol-3-yl ester.
P192	119–38–0	Carbamic acid, dimethyl-, 3-methyl-1- (1-methylethyl)-1H- pyrazol-5-yl ester.
P190	1129–41–5	Carbamic acid, methyl-, 3-methylphenyl ester.
P127	1563–66–2	Carbofuran.
*	*	*
P189	55285–14–8	Carbosulfan.
*	*	*
P202	64–00–6	m-Cumenyl methylcarbamate.
*	*	*
P191	644–64–4	Dimetilan.
*	*	*
P185	26419–73–8	1,3-Dithiolane-2-carboxaldehyde, 2,4-dimethyl-, O- [(methylamino)- carbonyl]oxime.
*	*	*
P194	23135–22–0	Ethanimidothioc acid, 2-(dimethylamino)-N-[[(methylamino) carbonyl]oxy]-2-oxo-, methyl ester.
*	*	*
P198	23422–53–9	Formetanate hydrochloride.

Hazardous waste No.	Chemical abstracts No.	Substance
P197	17702–57–7	Formparanate.
*	*	* * * * * * *
P192	119–38–0	Isolan.
P202	64–00–6	3-Isopropylphenyl N-methylcarbamate.
*	*	* * * * * * *
P196	15339–36–3	Manganese, bis(dimethylcarbamodithioato-S,S′)-,
P196	15339–36–3	Manganese dimethyldithiocarbamate.
*	23422–53–9	Methanimidamide, N,N-dimethyl-N′-[3-[[(methylamino)-carbonyl]oxy]phenyl]-, monohydrochloride. *1P198
P197	17702–57–7	Methanimidamide, N,N-dimethyl-N′-[2-methyl-4-[[(methylamino)carbonyl]oxy]phenyl]-
P199	2032–65–7	Methiocarb.
*	*	* * * * * * *
P190	1129–41–5	Metolcarb.
*	*	* * * * * * *
P199	2032–65–7	Mexacarbate.
*	*	* * * * * * *
P194	23135–22–0	Oxamyl.
*	*	* * * * * * *
P128	315–18–4	Phenol, 4-(dimethylamino)-3,5-dimethyl-, methylcarbamate (ester).
P199	2032–65–7	Phenol, (3,5-dimethyl-4-(methylthio)-, methylcarbamate
*	*	* * * * * * *
P202	64–00–6	Phenol, 3-(1-methylethyl)-, methyl carbamate.
*	*	* * * * * * *
P201	2631–37–0	Phenol, 3-methyl-5-(1-methylethyl)-, methyl carbamate.
*	*	* * * * * * *
P204	57–47–6	Physostigmine.
P188	57–64–7	Physostigmine salicylate.
*	*	* * * * * * *
P201	2631–37–0	Promecarb
P203	1646–88–4	Propanal, 2-methyl-2-(methyl-sulfonyl)-, O-[(methylamino)carbonyl] oxime.
*	*	* * * * * * *
P204	57–47–6	Pyrrolo[2,3-b]indol-5-ol, 1,2,3,3a,8,8a-hexahydro-1,3a,8-trimethyl-, methylcarbamate (ester), (3aS-cis)-.
*	*	* * * * * * *
P185	26419–73–8	Tirpate.
*	*	* * * * * * *
P205	137–30–4	Zinc, bis(dimethylcarbamodithioato-S,S′)-,
*	*	* * * * * * *
P205	137–30–4	Ziram.

* * * * *

(f) * * *

Hazardous waste No.	Chemical abstracts No.	Substance
U394	30558–43–1	A2213.
*	*	* * * * * * *
U365	2212–67–1	H-Azepine-1-carbothioic acid, hexahydro-, S-ethyl ester.
*	*	* * * * * * *
U280	101–27–9	Barban.
U278	22781–23–3	Bendiocarb.
U364	22961–82–6	Bendiocarb phenol.
U271	17804–35–2	Benomyl.
*	*	* * * * * * *
U278	22781–23–3	1,3-Benzodioxol-4-ol, 2,2-dimethyl-, methyl carbamate.

Hazardous waste No.	Chemical abstracts No.	Substance
U364	22961–82–6	1,3-Benzodioxol-4-ol, 2,2-dimethyl-,
U367	1563–38–8	7-Benzofuranol, 2,3-dihydro-2,2-dimethyl-
*	*	* * * * *
U401	97–74–5	Bis(dimethylthiocarbamoyl) sulfide.
U400	120–54–7	Bis(pentamethylene)thiuram tetrasulfide.
*	*	* * * * *
U392	2008–41–5	Butylate.
*	*	* * * * *
U372	10605–21–7	Carbamic acid, 1H-benzimidazol-2-yl, methyl ester.
U271	17804–35–2	Carbamic acid, [1-[(butylamino)carbonyl]-1H-benzimidazol-2-yl]-, methyl ester.
U375	55406–53–6	Carbamic acid, butyl-, 3-iodo-2-propynyl ester.
U280	101–27–9	Carbamic acid, (3-chlorophenyl)-, 4-chloro-2-butynyl ester.
U373	122–42–9	Carbamic acid, phenyl-, 1-methylethyl ester.
U409	23564–05–8	Carbamic acid, [1,2-phenylenebis (iminocarbonothioyl)]bis-, dimethyl ester.
*	*	* * * * *
U379	136–30–1	Carbamodithioic acid, dibutyl, sodium salt.
U277	95–06–7	Carbamodithioic acid, diethyl-, 2-chloro-2-propenyl ester.
U381	148–18–5	Carbamodithioic acid, diethyl-, sodium salt.
U383	128–03–0	Carbamodithioic acid, dimethyl, potassium salt.
U382	128–04–1	Carbamodithioic acid, dimethyl-, sodium salt.
U376	144–34–3	Carbamodithioic acid, dimethyl-, tetraanhydrosulfide with orthothioselenious acid.
*	*	* * * * *
U378	51026–28–9	Carbamodithioic acid, (hydroxymethyl)methyl-, monopotassium salt.
U384	137–42–8	Carbamodithioic acid, methyl-, monosodium salt.
U377	137–41–7	Carbamodithioic acid, methyl,- monopotassium salt.
*	*	* * * * *
U389	2303–17–5	Carbamothioic acid, bis(1-methylethyl)-, S-(2,3,3-trichloro-2-propenyl) ester.
U392	2008–41–5	Carbamothioic acid, bis(2-methylpropyl)-, S-ethyl ester.
U391	1114–71–2	Carbamothioic acid, butylethyl-, S-propyl ester.
U386	1134–23–2	Carbamothioic acid, cyclohexylethyl-, S-ethyl ester.
U390	759–94–4	Carbamothioic acid, dipropyl-, S-ethyl ester.
U387	52888–80–9	Carbamothioic acid, dipropyl-, S-(phenylmethyl) ester.
U385	1929–77–7	Carbamothioic acid, dipropyl-, S-propyl ester.
U279	63–25–2	Carbaryl.
U372	10605–21–7	Carbendazim.
U367	1563–38–8	Carbofuran phenol.
*	*	* * * * *
U393	137–29–1	Copper, bis(dimethylcarbamodithioato-S,S')-,
U393	137–29–1	Copper dimethyldithiocarbamate.
*	*	* * * * *
U386	1134–23–2	Cycloate.
*	*	* * * * *
U366	533–74–4	Dazomet.
*	*	* * * * *
U395	5952–26–1	Diethylene glycol, dicarbamate.
*	*	* * * * *
U403	97–77–8	Disulfiram.
*	*	* * * * *
U390	759–94–4	EPTC.
*	*	* * * * *
U404	101–44–8	Ethanamine, N,N-diethyl-
*	*	* * * * *
U410	59669–26–0	Ethanimidothioic acid, N,N'- [thiobis[(methylimino)carbonyloxy]]bis-, dimethyl ester
U394	30558–43–1	Ethanimidothioic acid, 2-(dimethylamino)-N-hydroxy-2-oxo-, methyl ester.
*	*	* * * * *
U395	5952–26–1	Ethanol, 2,2′-oxybis-, dicarbamate.

Hazardous waste No.	Chemical abstracts No.	Substance
*	*	* * * * * *
U407	14324–55–1	Ethyl Ziram.
*	*	* * * * * *
U396	14484–64–1	Ferbam.
*	*	* * * * * *
U375	55406–53–6	3-Iodo-2-propynyl n-butylcarbamate.
*	*	* * * * * *
U396	14484–64–1	Iron, tris(dimethylcarbamodithioato-S,S′)-,
*	*	* * * * * *
U384	137–42–8	Metam Sodium.
*	*	* * * * * *
U365	2212–67–1	Molinate.
*	*	* * * * * *
U279	63–25–2	1-Naphthalenol, methylcarbamate.
*	*	* * * * * *
U391	1114–71–2	Pebulate.
*	*	* * * * * *
U411	114–26–1	Phenol, 2-(1-methylethoxy)-, methylcarbamate.
*	*	* * * * * *
U400	120–54–7	Piperidine, 1,1′-(tetrathiodicarbonothioyl)-bis-
U383	128–03–0	Potassium dimethyldithiocarbamate.
U378	51026–28–9	Potassium n-hydroxymethyl- n-methyldi-thiocarbamate.
U377	137–41–7	Potassium n-methyldithiocarbamate.
*	*	* * * * * *
U373	112–42–9	Propham.
U411	114–26–1	Propoxur.
*	*	* * * * * *
U387	52888–80–9	Prosulfocarb.
*	*	* * * * * *
U376	144–34–3	Selenium, tetrakis(dimethyldithiocarbamate).
*	*	* * * * * *
U379	136–30–1	Sodium dibutyldithiocarbamate.
U381	148–18–5	Sodium diethyldithiocarbamate.
U382	128–04–1	Sodium dimethyldithiocarbamate.
*	*	* * * * * *
U277	95–06–7	Sulfallate.
*	*	* * * * * *
U402	1634–02–2	Tetrabutylthiuram disulfide.
*	*	* * * * * *
U401	97–74–5	Tetramethylthiuram monosulfide.
U366	533–74–4	2H-1,3,5-Thiadiazine- 2-thione, tetrahydro-3,5-dimethyl-
*	*	* * * * * *
U410	59669–26–0	Thiodicarb.
*	*	* * * * * *
U402	1634–02–2	Thioperoxydicarbonic diamide, tetrabutyl.
U403	97–77–8	Thioperoxydicarbonic diamide, tetraethyl.
*	*	* * * * * *
U409	23564–05–8	Thiophanate-methyl.
*	*	* * * * * *
U389	2303–17–5	Triallate.
*	*	* * * * * *
U404	101–44–8	Triethylamine.

Hazardous waste No.	Chemical abstracts No.	Substance
*	*	* * * * *
U385	1929–77–7	Vernolate.
*	*	* * * * *
U407	14324–55–1	Zinc, bis(diethylcarbamodithioato-S,S')-

* * * * *

5. Appendix VII to Part 261 is amended by adding the following waste streams in alphanumeric order (by the first column) to read as follows.

Appendix VII to Part 261—Basis for Listing Hazardous Waste

EPA hazardous waste No.	Hazardous constituents for which listed
*	* * * * * *
K156	Benomyl, carbaryl, carbendazim, carbofuran, carbosulfan, formaldehyde, methylene chloride, triethylamine.
K157	Carbon tetrachloride, formaldehyde, methyl chloride, methylene chloride, pyridine, triethylamine.
K158	Benomyl, carbendazim, carbofuran, carbosulfan, chloroform, methylene chloride.
K159	Benzene, butylate, eptc, molinate, pebulate, vernolate.
K160	Benzene, butylate, eptc, molinate, pebulate, vernolate.
K161	Antimony, arsenic, metam-sodium, ziram.

* * * * *

6. Appendix VIII of Part 261 is amended by adding the following hazardous constituents in alphabetical order to read as follows: The appropriate footnotes to Appendix VIII are republished without change.

APPENDIX VIII TO PART 261—HAZARDOUS CONSTITUENTS

Common name	Chemical abstracts name	Chemical abstracts No.	Hazardous waste No.
* *	* * * * *		*
A2213	Ethanimidothioic acid, 2- (dimethylamino) -N-hydroxy-2-oxo-, methyl ester ..	30558–43–1	U394
* *	* * * * *		*
Aldicarb sulfone	Propanal, 2-methyl-2- (methylsulfonyl) -, O-[(methylamino) carbonyl] oxime .	1646–88–4	P203
* *	* * * * *		*
Barban	Carbamic acid, (3-chlorophenyl) -, 4-chloro-2-butynyl ester	101–27–9	U280
* *	* * * * *		*
Bendiocarb	1,3-Benzodioxol-4-ol, 2,2-dimethyl-, methyl carbamate	22781–23–3	U278
Bendiocarb phenol	1,3-Benzodioxol-4-ol, 2,2-dimethyl-,	22961–82–6	U364
Benomyl	Carbamic acid, [1- [(butylamino) carbonyl]- 1H-benzimidazol-2-yl] -, methyl ester.	17804–35–2	U271
* *	* * * * *		*
Bis (dibutylcarbamothioa to) dioxodimolydenum sulfurized.	Molybdenum, bis (dibutylcarbamothioato) dioxodi-, sulfurized	68412–26–0	U389
Bis (pentamethylene)-thiuram tetrasulfide.	Piperidine, 1,1′-(tetrathiodicarbonothioyl)-bis-	120–54–7	U400
* *	* * * * *		*
Butylate	Carbamothioic acid, bis (2-methylpropyl)-, S-ethyl ester	2008–41–5	U392
* *	* * * * *		*
Carbaryl	1-Naphthalenol, methylcarbamate	63–25–2	U279
Carbendazim	Carbamic acid, 1H-benzimidazol-2-yl, methyl ester	10605–21–7	U372
Carbofuran	7-Benzofuranol, 2,3-dihydro-2,2-dimethyl-, methylcarbamate	1563–66–2	P127
Carbofuran phenol	7-Benzofuranol, 2,3-dihydro-2,2-dimethyl-	1563–38–8	U367
* *	* * * * *		*
Carbosulfan	Carbamic acid, [(dibutylamino) thio] methyl-, 2,3-dihydro-2,2-dimethyl-7-benzofuranyl ester.	55285–14–8	P189
* *	* * * * *		*
Copper dimethyldithiocarbamate	Copper, bis(dimethylcarbamodithioato-S,S')-,	137–29–1	U393

APPENDIX VIII TO PART 261—HAZARDOUS CONSTITUENTS—Continued

Common name	Chemical abstracts name	Chemical abstracts No.	Hazardous waste No.
* *	* * * *		*
m-Cumenyl methylcarbamate	Phenol, 3-(methylethyl)-, methyl carbamate	64–00–6	P202
* *	* * * *		*
Cycloate	Carbamothioic acid, cyclohexylethyl-, S-ethyl ester	1134–23–2	U386
* *	* * * *		*
Dazomet	2H-1,3,5-thiadiazine-2-thione, tetrahydro-3,5-dimethyl	533–74–4	U366
* *	* * * *		*
Diethylene glycol, dicarbamate	Ethanol, 2,2'-oxybis-, dicarbamate	5952–26–1	U395
* *	* * * *		*
Dimetilan	Carbamic acid, dimethyl-, 1- [(dimethylamino) carbonyl]-5-methyl-1H-pyrazol-3-yl ester.	644–64–4	P191
* *	* * * *		*
Disulfiram	Thioperoxydicarbonic diamide, tetraethyl	97–77–8	U403
* *	* * * *		*
EPTC	Carbamothioic acid, dipropyl-, S-ethyl ester	759–94–4	U390
* *	* * * *		*
Ethyl Ziram	Zinc, bis(diethylcarbamodithioato-S,S′)-	14324–55–1	U407
* *	* * * *		*
Ferbam	Iron, tris(dimethylcarbamodithioat-S,S′)-,	14484–64–1	U396
* *	* * * *		*
Formetanate hydrochloride	Methanimidamide, N,N-dimethyl-N′-[3-[[(methylamino) carbonyl]oxy]phenyl]-, monohydrochloride.	23422–53–9	P198
* *	* * * *		*
Formparanate	Methanimidamide, N,N-dimethyl-N′-[2-methyl-4-[[(methylamino) carbonyl]oxy]phenyl]-.	17702–57–7	P197
* *	* * * *		*
3-Iodo-2-propynyl n-butylcarbamate	Carbamic acid, butyl-, 3-iodo-2-propynyl ester	55406–53–6	U375
* *	* * * *		*
Isolan	Carbamic acid, dimethyl-, 3-methyl-1-(1-methylethyl)-1H-pyrazol-5-yl ester	119–38–0	P192
* *	* * * *		*
Manganese dimethyldithiocarbamate	Manganese, bis(dimethylcarbamodithioato-S,S′)-,	15339–36–3	P196
* *	* * * *		*
Metam Sodium	Carbamodithioic acid, methyl-, monosodium salt	137–42–8	U384
* *	* * * *		*
Methiocarb	Phenol, (3,5-dimethyl-4-(methylthio)-, methylcarbamate	2032–65–7	P199
* *	* * * *		*
Metolcarb	Carbamic acid, methyl-, 3-methylphenyl ester	1129–41–5	P190
* *	* * * *		*
Mexacarbate	Phenol, 4-(dimethylamino)-3,5-dimethyl-, methylcarbamate (ester)	315–18–4	P128
* *	* * * *		*
Molinate	1H-Azepine-1-carbothioic acid, hexahydro-, S-ethyl ester	2212–67–1	U365
* *	* * * *		*
Oxamyl	Ethanimidothioc acid, 2-(dimethylamino)-N-[[(methylamino)carbonyl]oxy]-2-oxo-, methyl ester.	23135–22–0	P194
* *	* * * *		*
Pebulate	Carbamothioic acid, butylethyl-, S-propyl ester	1114–71–2	U391

APPENDIX VIII TO PART 261—HAZARDOUS CONSTITUENTS—Continued

Common name	Chemical abstracts name	Chemical abstracts No.	Hazardous waste No.
* *	* * * *		*
Physostigmine	Pyrrolo[2,3-b]indol-5-01, 1,2,3,3a,8,8a-hexahydro-1,3a,8-trimethyl-, methylcarbamate (ester), (3aS-cis)-.	57–47–6	P204
Physostigmine	Benzoic acid, 2-hydroxy-, compd. with (3aS-cis) –1,2,3,3a,8,8a-hexahydro-1,3a,8-trimethylpyrrolo [2,3-b]indol-5-yl methylcarbamate ester (1:1).	57–64–7	P188
* *	* * * *		*
Potassium dimethyldithiocarbamate	Carbamodithioc acid, dimethyl, potassium salt	128–03–0	U383
Potassium hyroxymethyl-n-methyl-dithiocarbamate.	Carbamodithioc acid, (hydroxymethyl)methyl-, monopotassium salt	51026–28–9	U378
Potassium n-methyldithiocarbamate	Carbamodithioc acid, methyl-monopotassium salt	137–41–7	U377
* *	* * * *		*
Promecarb	Phenol, 3-methyl-5-(1-methylethyl)-, methyl carbamate	2631–37–0	P201
* *	* * * *		*
Propham	Carbamic acid, phenyl-, 1-methylethyl ester	122–42–9	U373
Propoxur	Phenol, 2-(1-methylethoxy)-, methylcarbamate	114–26–1	U411
* *	* * * *		*
Prosulfocarb	Carbamothioic acid, dipropyl-, S-(phenylmethyl) ester	52888–80–9	U387
* *	* * * *		*
Selenium, tetrakis (dimethyl-dithiocarbamate.	Carbamodithioic acid, dimethyl-, tetraanhydrosulfide with orthothioselenious acid.	144–34–3	U376
* *	* * * *		*
Sodium dibutyldithiocarbamate	Carbamodithioic acid, dibutyl, sodium salt	136–30–1	U379
Sodium diethyldithiocarbamate	Carbamodithioic acid, diethyl-, sodium salt	148–18–5	U381
Sodium dimethyldithiocarbamate	Carbamodithioic acid, dimethyl-, sodium salt	128–04–1	U382
* *	* * * *		*
Sulfallate	Carbamodithioic acid, diethyl-, 2-chloro-2-propenyl ester	95–06–7	U277
* *	* * * *		*
Tetrabutylthiuram disulfide	Thioperoxydicarbonic diamide, tetrabutyl	1634–02–2	U402
* *	* * * *		*
Tetrabutylthiuram monosulfide	Bis (dimethylthiocarbamoyl) sulfide	97–74–5	U401
* *	* * * *		*
Thiodicarb	Ethanimidothioic acid, N,N'-[thiobis [(methylimino) carbonyloxy]] bis-, dimethyl ester.	59669–26–0	U410
* *	* * * *		*
Thiophanate-methyl	Carbamic acid, [1,2-phyenylenebis (iminocarbonothioyl)] bis-, dimethyl ester	23564–05–8	U409
* *	* * * *		*
Tirpate	1,3-Dithiolane-2-carboxaldehyde, 2,4-dimethyl-, O-[(methylamino) carbonyl] oxime.	26419–73–8	P185
* *	* * * *		*
Triallate	Carbamothioic acid, bis(1-methylethyl)-, S-(2,3,3-trichloro-2-propenyl) ester	2303–17–5	U389
* *	* * * *		*
Triethylamine	Ethanamine, N,N-diethyl-	121–44–8	U404
* *	* * * *		*
Vernolate	Carbamothioic acid, dipropyl-, S-propyl ester	1929–77–7	U385
* *	* * * *		*
Ziram	ZInc, bis(dimethylcarbamodithioato-S,S')-, (T–4)-	137–30–4	P205
* *	* * * *		*

[1] The abbreviation N.O.S. (not otherwise specified) signifies those members of the general class not specifically listed by name in this appendix.

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

7. The authority citation for part 271 continues to read as follows:

Authority: 42 U.S.C. 6902; 33 U.S.C. 1321 and 1361.

8. Section 271.1(j) is amended by adding the following entry to Table 1 in chronological order by date of publication to read as follows.

§ 271.1 Purpose and scope.

* * * * *

(j) * * *

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Promulgation date	Title of regulation	Federal Register reference	Effective date
*	* * * *	*	*
Feb. 9, 1995	Listing Wastes from the Production of Carbamates	[Insert Federal Register page numbers].	Aug. 9, 1995
*	* * * *	*	*

PART 302—DESIGNATION, REPORTABLE QUANTITIES, AND NOTIFICATION

9. The authority citation for part 302 continues to read as follows:

Authority: 42 U.S.C. 9602, 9603, and 9604; 33 U.S.C. 1321 and 1361.

10. Section 302.4 is amended by adding the following entries in alphabetical order to Table 302.4 to read as follows. The appropriate footnotes to Table 302.4 are republished without change.

§ 302.4 Designation of hazardous substances.

* * * * *

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code +	RCRA waste No.	Category	Pounds (Kg)
*	*	*	*		*		*
1H-Azepine-1-carbothioic acid, hexahydro-, S-ethyl ester (Molinate).	2212671		1*	4	U365		# #
*	*	*	*		*		*
1,3-Benzodioxol-4-ol, 2,2-dimethyl-, (Bendiocarb phenol)	22961826		1*	4	U364		# #
1,3-Benzodioxol-4-ol, 2,2-dimethyl-, methyl carbamate (Bendiocarb).	22781233		1*	4	U278		# #
*	*	*	*		*		*
7-Benzofuranol, 2,3-dihydro-2,2-dimethyl- (Carbofuran phenol).	1563388		1*	4	U367		# #
*	*	*	*		*		*
Benzoic acid, 2-hydroxy-, compd. with (3aS-cis)-1,2,3,3a,8,8a-hexahydro-1,3a,8-trimethylpyrrolo[2,3-b]indol-5-yl methylcarbamate ester (1:1) (Physostigmine salicylate).	57647		1*	4	P188		# #
*	*	*	*		*		*
Bis(dimethylthiocarbamoyl) sulfide (Tetramethylthiuram monosulfide).	97745		1*	4	U401		# #
*	*	*	*		*		*
Carbamic acid, butyl-, 3-iodo-2-propynyl ester (3-iodo-2-propynyl n-butylcarbamate).	55406536		1*	4	U375		# #
Carbamic acid, [1-[(butylamino)carbonyl]-1H-benzimidazol-2-yl, methyl ester (Benomyl).	17804352		1*	4	U271		# #
Carbamic acid, 1H-benzimidazol-2-yl, methyl ester (Carbendazim).	10605217		1*	4	U372		# #
Carbamic acid, (3-chlorophenyl)-, 4-chloro-2-butynyl ester (Barban).	101279		1*	4	U280		# #
Carbamic acid, [(dibutylamino)thio]methyl-, 2,3-dihydro-2,2-dimethyl-7-benzofuranyl ester (Carbosulfan).	55285148		1*	4	P189		# #
Carbamic acid, dimethyl-,1- [(dimethylamino)carbonyl]-5-methyl-1H-pyrazol-3-yl ester (Dimetilan).	644644		1*	4	P191		# #
Carbamic acid, dimethyl-, 3-methyl-1-(1-methylethyl)-1H-pyrazol-5-yl ester (Isolan).	119380		1*	4	P192		# #

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code +	RCRA waste No.	Category	Pounds (Kg)
* * *	*	*		*			*
Carbamic acid, methyl-, 3-methylphenyl ester (Metolcarb) ...	1129415		1*	4	P190		# #
Carbamic acid, [1,2- phenylenebis(iminocarbonothioyl)]bis-, dimethyl ester (Thiophanate-methyl).	23564058		1*	4	U409		# #
Carbamic acid, phenyl-, 1-methylethyl ester (Propham)	122429		1*	4	U373		# #
* * *	*	*		*			*
Carbamodithioic acid, dibutyl, sodium salt (Sodium dibutyldithiocarbamate).	136301		1*	4	U379		# #
Carbamodithioic acid, diethyl-, 2-chloro-2-propenyl ester (Sulfallate).	95067		1*	4	U277		# #
Carbamodithioic acid, diethyl-, sodium salt (Sodium diethyldithiocarbamate).	148185		1*	4	U381		# #
Carbamodithioic acid, dimethyl, potassium salt (Potassium dimethyldithiocarbamate).	128030		1*	4	U383		# #
Carbamodithioic acid, dimethyl-, sodium salt (Sodium dimethyldithiocarbamate).	128041		1*	4	U382		# #
Carbamodithioic acid, dimethyl-, tetraanhydrosulfide with orthothioselenious acid (Selenium, tetrakis(dimethyldithiocarbamate)).	144343		1*	4	U376		# #
Carbamodithioic acid, (hydroxymethyl)methyl-, monopotassium salt (Potassium n-hydroxymethyl-n-methyldithiocarbamate).	51026289		1*	4	U378		# #
Carbamodithioic acid, methyl,- monopotassium salt (Potassium n-methyldithiocarbamate).	137417		1*	4	U377		# #
Carbamodithioic acid, methyl-, monosodium salt (Metam Sodium).	137428		1*	4	U384		# #
* * *	*	*		*			*
Carbamothioic acid, bis(2-methylpropyl)-, S-ethyl ester (Butylate).	2008415		1*	4	U392		# #
* * *	*	*		*			*
Carbamothioic acid, bis(1-methylethyl)-, S-(2,3,3-trichloro-2-propenyl) ester (Triallate).	2303175		1*	4	U389		# #
Carbamothioic acid, butylethyl-, S-propyl ester (Pebulate) ...	1114712		1*	4	U391		# #
Carbamothioic acid, cyclohexylethyl-, S-ethyl ester (Cycloate).	1134232		1*	4	U386		# #
Carbamothioic acid, dipropyl-, S-ethyl ester (EPTC)	759944		1*	4	U390		# #
Carbamothioic acid, dipropyl-, S-(phenylmethyl) ester (Prosulfocarb).	52888809		1*	4	U387		# #
Carbamothioic acid, dipropyl-, S-propyl ester (Vernolate)	1929777		1*	4	U385		# #
* * *	*	*		*			*
Copper, bis(dimethylcarbamodithioato-S,S′)-(Cooper dimethyldithiocarbamate).	137291		1*	4	U393		# #
* * *	*	*		*			*
1,3-Dithiolane-2-carboxaldehyde, 2,4-dimethyl-, O-[(methylamino)carbonyl]oxime (Tirpate).	26419738		1*	4	P185		# #
* * *	*	*		*			*
Ethanimidothioci acid, 2-(dimethylamino-N-hydroxy-2-oxo-, methyl ester (A2213).	30558431		1*	4	U394		# #
* * *	*	*		*			*
Ethanimidothoic acid, 2-(dimethylamino)-N-[[(methylamino)carbonyl]oxy]-2-oxo-, methyl ester (Oxamyl).	23135220		1*	4	P194		# #
* * *	*	*		*			*
Ethanimidothioic acid, N,N′-[thiobis[(methylimino)carbonyloxy]]bis-,dimethyl ester (Thiodicarb).	59669260		1*	4	U410		# #

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code+	RCRA waste No.	Category	Pounds (Kg)
* * *	*	*		*			*
Ethanol, 2,2′-oxybis-, dicarbamate (Diethylene glycol, dicarbamate).	5952261		1*	4	U395		# #
* * *	*	*		*			*
Iron, tris(dimethylcarbamodithioato-S,S′)-(Ferbam)	14484641		1*	4	U396		# #
* * *	*	*		*			*
Manganese, bis(dimethylcarbamodithioato-S,S′)-(Maneb)	15339363		1*	4	P196		# #
* * *	*	*		*			*
Methanimidamide, N,N-dimethyl-N′-[3-[[(methylamino)carbonyl]oxylphenyl]-, monohydrochioride (Formetanate hydrochloride).	23422539		1*	4	P198		# #
* * *	*	*		*			*
Methanimidamide, N,N-dimethyl-N′-[2-methyl-4-[[(methylamino)carbonyl]oxy]phenyl]-(Formparanate).	17702577		1*	4	P197		# #
* * *	*	*		*			*
Phenol, 3-(1-methylethyl)-, methyl carbamate (m-Cumenyl methylcarbamate).	64006		1*	4	P202		# #
* * *	*	*		*			*
Phenol, 3-methyl-5-(1-methylethyl)-, methyl carbamate (Promecarb).	2631370		1*	4	P201		# #
* * *	*	*		*			*
Piperidine, 1,1'-(tetrathiodicarbonothioyl)-bis-(Bis(pentamenthylene)thiuram tetrasulfide).	120547		1*	4	U400		# #
* * *	*	*		*			*
Propanal, 2-methyl-2-(methylsulfonyl)-, O-[(methylamino)carbonyl] oxime (Aldicarb sulfone).	1646884		1*	4	P203		# #
* * *	*	*		*			*
Pyrrolo[2,3-b] indol-5-ol, 1,2,3,3a,8,8a-hexahydro-1,3a,8-trimethyl-, methylcarbamate (ester), (3aS-cis)-(Physostigmine.	57476		1*	4	P204		# #
* * *	*	*		*			*
2H-1,3,5-Thiadiazine-2-thione, tetrahydro-3,5-dimethyl-(Dazomet).	533744		1*	4	U366		# #
* * *	*	*		*			*
Thioperoxydicarbonic diamide, tetrabutyl (Tetrabutylthiuram disulfide).	1634022		1*	4	U402		# #
Thioperoxydicarbonic diamide, tetraethyl (Disulfiram)	97778		1*	4	U403		# #
* * *	*	*		*			*
Zinc, bis(dimethylcarbomodithioato-S,S′)-, (Ziram)	137304		1*	4	P205		# #
Zinc, bis(diethylcarbamodithioato-S,S′)-(Ethyl Ziram)	14324551		1*	4	U407		# #
* * *	*	*		*			*
K156 Organic waste (including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates) from the production of carbamates and carbamoyl oximes.			1*	4	K156		# #
K157 Wastewaters (including scrubber waters, condenser waters, washwaters, and separation waters) from the production of carbamates and carbamoyl oximes (This listing does not include sludges derived from the treatment of these wastewaters).			1*	4	K157		# #
K158 Bag house dusts and filter/separation solids from the production of carbamates and carbamoyl oximes.			1*	4	K158		# #
K159 Organics from the treatment of thiocarbamate wastes.			1*	4	K159		# #

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code+	RCRA waste No.	Category	Pounds (Kg)
K160 Solids (including filter wastes, separation solids, and spent catalysts) from the production of thiocarbamates and solids from the treatment of thiocarbamate wastes.			1*	4	K160		# #
K160 Purification solids (including filtration, evaporation, and centrifugation solids), bag house dust, and floor sweepings from the production of dithiocarbamate acids and their salts (This listing does not include K125 or K126.).			1*	4	K161		# #

+—Indicates the statutory source as defined by 1, 2, 3, and 4 below.
4—Indicates that the statutory source for designation of this hazardous substance under CERCLA is RCRA Section 3001.
1*—Indicates that the 1-pound RQ is a CERCLA statutory RQ.
#—The Agency may adjust the statutory RQ for this hazardous substance in a future rulemaking; until then the statutory RQ applies.

[FR Doc. 95–2983 Filed 2–8–95; 8:45 am]
BILLING CODE 6560–50–P

Thursday
February 9, 1995

Part III

Federal Election Commission

11 CFR Parts 100, 104, and 113

Contribution and Expenditure Limitations and Prohibitions: Personal Use of Campaign Funds; Final Rule

FEDERAL ELECTION COMMISSION

[Notice 1995–5]

11 CFR Parts 100, 104 and 113

Expenditures; Reports by Political Committees; Personal Use of Campaign Funds

AGENCY: Federal Election Commission.

ACTION: Final rules; transmittal of regulations to Congress.

SUMMARY: The Federal Election Commission has revised its regulations governing the personal use of campaign funds. These regulations implement portions of the Federal Election Campaign Act of 1971, as amended. The new rules insert a definition of personal use into the Commission's regulations. The rules also amend the definition of expenditure and the reporting requirements for authorized committees in the current regulations.

EFFECTIVE DATES: Further action, including the announcement of an effective date, will be taken after these regulations have been before Congress for 30 legislative days pursuant to 2 U.S.C. 438(d). A document announcing the effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street, NW., Washington, DC 20463, (202) 219–3690 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Commission is today publishing the final text of revisions to its regulations at 11 CFR parts 100, 104 and 113. These revisions implement section 439a of the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. § 431 *et seq.* [''FECA'' or ''the Act'']. Section 439a states that no amounts received by a candidate as contributions that are in excess of any amount necessary to defray his or her expenditures may be converted by any person to any personal use, other than to defray and ordinary and necessary expenses incurred in connection with his or her duties as a holder of Federal office. The new rules insert a definition of personal use into Part 113 of the current regulations. The rules also amend the reporting requirements for authorized committees at 11 CFR 104.3, and the definition of expenditure at 11 CFR 100.8.

The final rules published today are the result of an extended rulemaking process. In August of 1993, the Commission published a Notice of Proposed Rulemaking [''NPRM''] seeking comment on proposed rules governing the conversion of campaign funds to personal use. 58 FR 45463 (August 30, 1993). The NPRM contained a proposed general definition of personal use, several enumerated examples, and other provisions for the administration of the personal use prohibition. The Commission subsequently granted a request for a 45 day extension of the comment period. 58 FR 52040 (Oct. 6, 1993). The Commission received 32 comments from 31 commenters in response to the NPRM. The Commission also held a public hearing on January 12, 1994, at which it heard testimony from five witnesses on the proposed rules.

After reviewing the comments received and the testimony given, Commission staff prepared draft final rules, which were considered at an open meeting held on May 19, 1994. The Commission also considered at that time several requests it had received for an additional opportunity to comment on the rules before they were finally promulgated. The Commission decided to seek additional comment on the rules, and published a Request for Additional Comments on August 17, 1994 [''RAC'']. 59 FR 42183 (August 17, 1994). The RAC contained a revised set of draft rules, including a revised definition of personal use that differed significantly from the general definition set out in the 1993 NPRM. The Commission received 31 comments from 34 commenters in response to the Request.

The comments received provided valuable information that serves as the basis for the final rules published today. Elements of both sets of draft rules have been incorporated into the final rules.

Section 438(d) of Title 2, United States Code requires that any rules or regulations prescribed by the Commission to carry out the provisions of Title 2 of the United States Code be transmitted to the Speaker of the House of Representatives and the President of the Senate 30 legislative days before they are finally promulgated. These regulations were transmitted to Congress on February 3, 1995.

Explanation and Justification

The 1979 amendments to the Federal Election Campaign Act, Pub. L. No. 96–187, 93 Stat. 1339, 1366–67, amended 2 U.S.C. § 439a to prohibit the use of campaign funds by any person for personal use, other than an individual serving as a Member of Congress on January 8, 1980. Under this provision, the Commission must determine whether a disbursement of campaign funds is a campaign expenditure, a permissible expense connected to the duties of a holder of Federal office, or a conversion to personal use. The Commission undertook this rulemaking in an effort to provide additional guidance on these issues to the regulated community.

Some of the comments received contained general observations on the Commission's effort to promulgate personal use rules. Many commenters expressed general support for the Commission's efforts, but other commenters objected to Commission action in this area. One commenter expressed doubt that the Commission would be able to regulate personal use with these kinds of rules. A number of commenters argued that this entire area should be left to Congress. Two of these commenters objected to the rulemaking on the grounds that it is an expansion of Commission authority that is not mandated by Congressional action, one saying Congressional inaction does not confer jurisdiction on the Commission to take action.

However, this rulemaking is clearly within the Commission's jurisdiction and authority. Section 438(a)(8) of Title 2 states that ''[t]he Commission shall prescribe rules, regulations and forms to carry out the provisions of [the Federal Election Campaign Act] * * *.'' This rulemaking is an effort by the Commission to carry out the provisions of section 439a by more clearly defining personal use. Thus, it is precisely the kind of rulemaking contemplated by Congress when it enacted section 438(a)(8).

In addition, this rulemaking is prompted, in large part, by more recent Congressional action, specifically, the Ethics Reform Act of 1989, Pub. L. No. 101–194, 103 Stat. 1716. Section 504 of the Ethics Reform Act repealed a ''grandfather'' provision that Congress included in section 439a when it enacted the personal use prohibition in 1979. This grandfather provision exempted any person who was a ''Senator or Representative in, or Delegate or Resident Commissioner to, the Congress'' on January 8, 1980 from the personal use prohibition. By repealing the grandfather provision, Section 504 of the Ethics Reform Act limited conversions to personal use by grandfathered Members and former Members to the unobligated balance in their campaign accounts on November 30, 1989. It also completely prohibited conversions of campaign funds by anyone serving in the 103rd or any later Congress. Thus, any grandfathered Members who returned to Congress in January, 1993 gave up the right to convert funds to personal use.

Many of the enforcement actions and advisory opinions the Commission

addressed before the start of the 103rd Congress involved persons who, because they were Members of Congress on January 8, 1980, were eligible to convert campaign funds to personal use. Consequently, the question of whether a particular disbursement was a legitimate campaign expenditure or a conversion of campaign funds to personal use may not have been fully explored during that period. A few former Members of Congress may still be covered by the grandfather provision and so continue to be eligible to convert campaign funds to personal use. These former Members are not affected by the new rules published today.

However, the Commission expects that, in the future, most of the situations it will address will involve persons who are not eligible to convert funds to personal use. This increases the need for a clear distinction between permissible uses of campaign funds and impermissible conversions to personal use. In an effort to address this need, the Commission initiated this rulemaking. The Commission is hopeful that the promulgation of these rules will provide much needed guidance to the regulated community.

This Explanation and Justification departs from the Commission's usual practice of discussing the provisions of the final rules in numerical order. The amendments to Parts 100 and 104 are an outgrowth of the new rules inserted in part 113. Consequently, part 113 will be discussed first, in order to place the amendments to parts 100 and 104 in the proper context.

Part 113—Excess Campaign Funds and Funds Donated to Support Federal Officeholder Activities (2 U.S.C. 439a)

Section 113.1 Definitions (2 U.S.C. 439a)

The final rules insert a definition of personal use into § 113.1, which contains the definitions that apply to Part 113. Part 113 lists the permissible uses of excess campaign funds and states that excess funds cannot be converted to personal use. Under § 113.1(e), candidates can determine that a portion of their campaign funds are excess campaign funds. The final rules treat the use of campaign funds for personal use as a determination by the candidate that the funds used are excess campaign funds. The personal use definition is inserted as section 113.1(g).

Section 113.1(g) contains a general definition of personal use. Section 113.1(g)(1) expands on this general definition. Paragraph (g)(1)(i) contains a list of expenses that are *per se* personal use. Paragraph (g)(1)(ii) explains how the Commission will analyze situations not covered by the list of expenses in paragraph (g)(1)(i). The remaining provisions of § 113.1(g) set out specific exclusions from the definition of personal use, explain how the definition interacts with certain House and Senate rules, and describe the circumstances under which payments for personal use expenses by third parties will be considered contributions.

Section 113.1(g) General Definition

The general definition of personal use is set out in new paragraph 113.1(g). Personal use is any use of funds in a campaign account of a present or former candidate to fulfill a commitment, obligation or expense of any person that would exist irrespective of the candidate's campaign or responsibilities as a Federal officeholder.

Under this definition, expenses that would be incurred even if the candidate was not a candidate or officeholder are treated as personal rather than campaign or officeholder related. This approach is based on Advisory Opinions 1980–138 and 1981–2, in which the Commission said that ''expenses which would exist regardless of an individual's election to Federal office are not 'incidental' and may not be paid from campaign funds.'' Advisory Opinion 1981–2. Since not all cases that raise personal use questions can be specifically addressed in a rule, this standard provides a guideline for the Commission and the regulated community to use in determining whether a particular expense is permissible or prohibited.

The final rules supersede Advisory Opinion 1976–17, in which the Commission said that ''any disbursements made and reported by the campaign as expenditures will be deemed to be for the purpose of influencing the candidate's election.'' A disbursement for campaign funds will not be deemed to be for the purpose of influencing an election if the disbursement is for an expense that is considered a personal use under these rules.

The rules supersede Advisory Opinion 1980–49, in which the Commission indicated that section 439a allows a campaign to pay the ''personal living expenses'' of the candidate. The use of campaign funds to pay the personal living expenses of the candidate is a prohibited personal use under these rules. Similarly, the rules supersede Advisory Opinions 1982–64 and 1976–53, to the extent that they allowed the use of campaign funds for living expenses incurred during the campaign. However, the rules do not prohibit the use of campaign funds for campaign or officeholder related meal expenses or subsistence expenses incurred during campaign or officeholder related travel. Generally, these uses are permissible under §§ 113.1(g)(1)(ii) (B) and (C). These sections will be discussed in detail below.

In approving the irrespective definition for inclusion in the final rules, the Commission returned to the definition set out in the 1993 NPRM. The Commission had proposed an alternative definition in the August 1994 Request for Additional Comments. Under the alternative definition, personal use would have been any use of funds that confers a benefit on a present or former candidate or a member of the candidate's family that is not primarily related to the candidate's campaign or the ordinary and necessary duties of a holder of Federal office. The Commission received numerous comments on both of these definitions.

Many commenters expressed strong support for the irrespective definition contained in the final rules. These commenters said the alternative definition is vague and would force the Commission to engage in piecemeal decisionmaking. Thus, the commenters said, the alternative definition would be difficult to enforce, and would not curtail any of the abuses taking place under current law. Consequently, the alternative version would not be an improvement over the current situation.

In contrast, the commenters who preferred the alternative version argued that it uses more established and well understood principles, and thus would reduce the likelihood of conflicts with other laws. They also said it more closely tracts the statute and more closely serves the purposes of the Ethics Reform Act of 1989, Pub. L. No. 101–194, 103 Stat. 1716 (1989). Two commenters criticized the irrespective definition, saying it does not provide enough guidance and leaves too much room for regulatory interpretation. These commenters said the alternative version would be flexible enough to accommodate a wide range of political and campaign activity, and would preserve the discretion recognized in the Commission's previous advisory opinions.

The irrespective definition is preferable to the alternative version because determining whether an expense would exist irrespective of candidacy can be done more objectively than determining whether an expense is primarily related to the candidacy. If campaign funds are used for a financial obligation that is caused by campaign activity or the activities of an

officeholder, that use is not personal use. However, if the obligation would exist even in the absence of the candidacy or even if the officeholder were not in office, then the use of funds for that obligation generally would be personal use.

In contrast, determining whether an expense is primarily related to a campaign or the duties of an officeholder, or instead is primarily related to some other activity, would force the Commission to draw conclusions as to which relationship is more direct or significant. The Commission has been reluctant to make these kinds of subjective determinations in the past. Moreover, any rule that requires these kinds of determinations can result in more *ad hoc* decisionmaking. The Commission initiated this rulemaking in order to reduce piecemeal resolution of personal use issues, and to provide more prospective guidance to the regulated community as to the kinds of uses that will be considered personal use. The Commission has concluded that the irrespective definition will more successfully achieve these goals.

The general definition of personal use originally proposed by the Commission in the 1993 NPRM applied to any use of campaign funds, regardless of whether the use benefited the candidate, a family member, a campaign employee or an unrelated party. However, under the revised draft rules set out in the RAC, the general definition would have been more limited. This definition would have covered only those uses of campaign funds that benefit the candidate or members of the candidate's family.

The final rules return to the original approach because this approach is more consistent with the FECA. Section 439a states that no campaign funds ''may be converted by any person to any personal use.'' Thus, under the final rules, any use of campaign funds that would exist irrespective of the campaign or the duties of a Federal officeholder is personal use, regardless of whether the beneficiary is the candidate, a family member of the candidate, or some other person.

Paragraph (g)(1)(i)

Paragraph (g)(1)(i) of the final rules contains a list of expenses that are considered personal use. The list includes household food items, funeral expenses, clothing, tuition payments, mortgage, rent and utility payments, entertainment expenses, club dues, and salary payments to family members. The rule assumes that, in the indicated circumstances, these expenses would exist irrespective of the candidate's campaign or duties as a Federal officerholder. Therefore, the rule treats the use of campaign funds for these expenses as *per se* personal use.

In adopting a *per se* list, the Commission rejected the alternative approach set out in the RAC. Under the alternative approach, the expenses on the list were not presumed to fall within the general definition of personal use. Instead, they were merely examples of expenses to which the ''primarily related'' standard would then be applied on a case by case basis.

Most of the commenters that addressed this issue preferred the list of *per se* personal uses that has been incorporated into the final rules. These commenters characterized the alternative version as a return to case by case review that would not provide any useful guidance to the regulated community and would not make it any easier to enforce the personal use prohibition. These commenters urged the Commission to use the *per se* approach and write whatever exceptions are necessary into the specific provisions of the list. The Commission used this approach in drafting the final rules.

However, two commenters went a step further. They urged the Commission to limit the rule to a list of specific uses that would be personal use, and eliminate the general definition of personal use that would apply to other situations. However, the Commission decided not to adopt this approach. It is doubtful that the agency could draft a complete list of the kinds of uses that raise personal use issues under section 439a. In addition, the Commission has identified some situations that warrant allocation between permissible and personal expenses. *See* section 5 of the discussion of paragraph (g)(1)(ii), below. Therefore, the rules would be incomplete without a general definition that could be applied to other situations.

One commenter argued that the *per se* list will reduce candidate flexibility in determining how to use campaign resources, and urged the Commission to adopt the alternative proposal because it strikes what the commenter believes is the appropriate balance.

However, a list of *per se* personal uses is preferable to a list of examples to which a ''primarily related'' test would be applied. By listing those uses that will be considered personal use and setting out the exceptions that apply, the *per se* list draws a clearer line and reduces the need or case by case review. A committee or a candidate can examine the rules and be much more certain about what constitutes personal use.

In contrast, the alternative approach undercuts the Commission's efforts to provide clearer guidance. Under the alternative approach, the Commission would have to examine the facts and circumstances of each situation in order to determine whether a particular use is personal use. Thus, the alternative approach would require more Commission involvement in the resolution of personal use issues.

1. Household Food Items and Supplies. Under paragraph (g)(1)(i)(A) of the final rules, the use of campaign funds for household food items and supplies is personal use. This provision covers any food purchased for day to day consumption in the home, and any supplies purchased for use in maintaining the household. The need for these items would exist irrespective of the candidate's campaign or duties as a Federal officeholder. Therefore, the Commission regards them as inherently personal and subject to the personal use ban.

However, this provision would not prohibit the purchase of food or supplies for use in fundraising activities, even if the fundraising activities take place in the candidate's home. Items obtained for fundraising activities are not household items within the meaning of this provision. Similarly, refreshments for a campaign meeting would not be covered by this paragraph.

In addition, this provision does not apply to the use of campaign funds for meal expenses incurred outside the home. The use of campaign funds for these expenses is governed by section 113.1(g)(1)(ii)(B), which will be discussed further below. Similarly, this provision does not apply to the use of campaign funds for subsistence expenses, that is, food and shelter, incurred during travel. Section 113.1(g)(1)(ii)(C) specifically addressed this situation, and will be discussed in greater detail below.

2. Funeral, Cremation and Burial Expenses. Paragraph (g)(1)(i)(B) of the final rules indicates that the use of campaign funds to pay funeral, cremation or burial expenses is personal use. Campaign funds have been used for these expenses in the past by the estates of former Members of Congress who were covered by the grandfather provision and therefore could convert campaign funds to personal use. The Commission believes that these expenses are inherently personal in nature, and, under the current state of the law, should be covered by the personal use ban. The Commission

received no comments on this provision.

Section 113.1(g)(4) of the final rules contains an exception to the personal use definition that is relevant here. Section 113.1(g)(4), which will be discussed further below, states that gifts and donations of nominal value made on special occasions are not personal use, unless they are made to a member of the candidate's family. Under this provision, campaign funds can be used to send flowers to a constituent's funeral as an expression of sympathy without violating section 439a. However, if campaign funds are used to pay for costs of the funeral, that use is personal use under paragraph (g)(1)(i)(B).

3. Clothing. Under paragraph (g)(1)(i)(C) of the final rules, the use of campaign funds to purchase clothing is generally personal use. However, the rule contains an exception for clothing items of *de minimis* value that are used in the campaign. Thus, if a campaign committee uses campaign funds to purchase campaign T-shirts and caps with campaign slogans, the purchase is not personal use. One commenter expressed support for this provision.

This rule supersedes Advisory Opinion 1985–22 to the extent that opinion can be read to allow the use of campaign funds for these purposes. In that opinion, the requester sought to use campaign funds to purchase ''specialized attire'' to wear at ''politically related functions which [were] both social and official business.'' The Commission concluded that the requester's committee could use the funds for these purposes because the requester was grandfathered. However, the language of the opinion suggests that the use of campaign funds for these purposes would also have been permissible if the clothing was to be used in connection with the campaign. Under paragraph (g)(1)(i)(C), the use of campaign funds for these purposes is personal use.

4. Tuition Payments. Under paragraph (g)(1)(i)(D) of the final rules, the use of campaign funds for tuition payments is personal use. However, this provision contains an exception that allows a committee to pay the costs of training campaign staff members, including candidates and officeholders, to perform the tasks involved in conducting a campaign. The Commission received no comments on this provision.

The Commission has concluded that only those tuition payments that fall within the narrow exception set out in the rule are campaign related and should be payable with campaign funds. Other tuition costs, whether for members of the campaign staff or other persons, are subject to the personal use prohibition.

5. Mortgage, Rent and Utility Payments. Paragraph (g)(1)(i)(E) of the final rules addresses the use of campaign funds for mortgage, rent or utility payments on real or personal property owned by the candidate or a member of the candidate's family. In the past, the Commission has generally allowed campaigns to rent property owned by the candidate or a family member for use in the campaign, so long as the campaign did not pay rent in excess of the usual and normal charge for the kind of property being rented. See Advisory Opinions 1993–1, 1988–13, 1985–42, 1983–1, 1978–80, 1977–12, and 1976–53.

The new rule changes the Commission's policy with regard to rental of all or part of a candidate or family member's personal residence. Under paragraph (g)(1)(i)(E)(*1*), the use of campaign funds for mortgage, rent or utility payments on any part of a personal residence of the candidate or a member of the candidate's family is personal use, even if part of the personal residence is being used in the campaign. This paragraph supersedes Advisory Opinions 1988–13, 1985–42, 1983–1 and 1976–53, since they allow the use of campaign funds for these purposes.

In contrast, paragraph (g)(1)(i)(E)(*2*) continues the Commission's current policy in situations where the property being rented is not part of a personal residence of the candidate or a member of the candidate's family. Thus, a campaign committee can continue to rent part of an office building owned by the candidate for use in the campaign, so long as the committee pays no more than fair market value for the property usage.

Paragraph (g)(1)(i)(E)(*2*) is consistent with Advisory Opinions 1977–12 and 1978–80. It is also consistent with the result reached in Advisory Opinion 1993–1, in which the Commission allowed a candidate to rent a storage shed that was not part of his or her personal residence for use in the campaign. However, Advisory Opinion 1993–1 cites Advisory Opinions 1988–13, 1985–42, and 1983–1 as authority for this conclusion. As indicated above, these opinions are superseded by paragraph (*1*). Consequently, they should no longer be regarded as authority for the result reached in AO 1993–1.

The use of campaign funds to make mortgage, rent or utility payments on real or personal property that is not used in the campaign would be reviewed under the general definition of personal use. These expenses presumably would exist irrespective of the candidacy, so the use of campaign funds to pay these expenses would be personal use.

The Commission received a number of comments on its proposed rules in this area. Four commenters urged the Commission to prohibit all transactions between the campaign committee and the candidate, saying that the rules should require the committee to enter into arms length transactions with unrelated third parties. Two of these commenters said the prohibition should be extended to transactions with any member of the candidate's family unit. In contrast, four other commenters urged the Commission to continue to allow these transactions so long as they involve *bona fide* rentals at fair market value.

The Commission has adopted what is essentially a middle ground. The rule prohibits payments for use of a personal residence because the expenses of maintaining a personal residence would exist irrespective of the candidacy or the Federal officeholder's duties. Thus, the rule draws a clear line, and avoids the need to allocate expenses associated with the residence between campaign and personal use.

At the same time, the Commission believes it is unnecessary to change its current policy regarding payments for the use of other property. These arrangements more closely resemble arms length transactions in that the property in question is available on the open market. Also, these arrangements generally do not raise the same kinds of allocation issues. Consequently, so long as the campaign pays fair market value, these payments will not be considered personal use.

It is important to note that paragraph (g)(1)(i)(E)(*1*) does not prohibit the campaign from using a portion of the candidate's personal residence for campaign purposes. It merely limits the committee's ability to pay rent for such a use. The candidate retains the option of using his or her personal residence in the campaign, so long as it is done at no cost to the committee. The Commission specifically allowed such an arrangement in Advisory Opinion 1986–28. That opinion is not affected by the new rules.

Nor should this rule be read to prohibit a campaign committee from paying the cost of long distance telephone calls associated with the campaign, even if those calls are made on a telephone located in a personal residence of the candidate or a member of the candidate's family. Since these calls are separately itemized on the residential telephone bill, they can

easily be attributed to the campaign without raising allocation issues.

6. Entertainment. Paragraph (g)(1)(i)(F) states that the use of campaign funds to pay for admission to a sporting event, concert, theater or other form of entertainment is personal use, unless the admission is part of a specific campaign or officeholder activity.

Several commenters urged the Commission to impose limits on the use of campaign funds for admission to these kinds of events. One suggested that these uses be prohibited unless they are part of a *bona fide* fundraising event, and said the Commission should require explicit solicitation of contributions in order to ensure that fundraising takes place. Another commenter recommended that the rule only allow the use of campaign funds if guests are present, and then only for the guests' admissions. A third commenter would require the candidate to show that the event was overwhelmingly campaign related in order to eliminate borderline cases. A fourth argued that these uses should only be allowed when the event is integral to campaign activity, and not when it is merely an event at which those present occasionally discuss campaign related subjects.

Other commenters took a different view. One commenter argued that meeting and mingling with supporters is a legitimate campaign activity, and that the expenses associated with that activity are a legitimate campaign expense. This commenter urged the Commission to allow the use of campaign funds for these purposes so long as the event takes place within the candidate's district. Another commenter said that the rules should allow committees to buy tickets for these events and give them to campaign workers, volunteers, and constituents.

The final rules require that the purchase of tickets be part of a particular campaign event or officeholder activity and not a leisure outing at which the discussion occasionally focuses on the campaign or official functions. This is not intended to include traditional campaign activity, such as attendance at county picnics, organizational conventions, or other community or civic occasions. This approach recognizes that these activities can be campaign or officeholder related. Moreover, the rules do not require an explicit solicitation of contributions or make distinctions based on who participates in the activity, since this would be a significant intrusion into how candidates and officeholders conduct campaign business.

7. Dues, Fees and Gratuities. Paragraph (g)(1)(i)(G) of the final rules provides that using campaign funds to pay dues, fees or gratuities to a country club, health club, recreational facility or other nonpolitical organization is personal use. Under this rule, membership dues, greens fees, court fees or other payments for access to these clubs are personal use, as are payments to caddies or professionals who provide services at the club, regardless of whether they are club employees or independent contractors. However, this rule contains an exception that allows a candidate holding a fundraising event on club premises to use campaign funds to pay the cost of the event. In this situation, the payments would be expenditures rather than personal use.

The Commission received a mix of comments on this provision. One commenter supported the rule, but urged the Commission to make it stronger by narrowing the exception for fundraising events. Another commenter took a different view, saying that a candidate's greens fees for golf with supporters or potential supporters is a legitimate campaign expense and should be allowed.

Once again, the rule charts a middle course. Playing a round of golf or going to a health club is often a social outing where the benefits received are inherently personal. Consequently, the use of campaign funds to pay for these activities will generally be personal use.

However, the rule is not so broad as to limit legitimate campaign related or officeholder related activity. The costs of a fundraising event held on club premises are no different under the FECA than the costs of a fundraiser held at another location, so the rule contains and exception that indicates that payments for these costs are not personal use. However, this exception does not cover payments made to maintain unlimited access to such a facility, even if access if maintained to facilitate fundraising activity. The exception is limited to payments for the costs of a specific fundraising event.

The rule also allows a candidate or officeholder to use campaign funds to pay membership dues in an organization that may have political interests. This would include community or civic organizations that a candidate or officeholder joins in his or her district in order to maintain political contacts with constituents or the business community. Even though these organizations are not considered political organizations under 26 U.S.C. § 527, they will be considered to have political aspects for the purposes of this rule.

8. Salary Payments to the Candidate's Family Members. The final rules also clarify the Commission's policy regarding the payment of a salary to members of the candidate's family. Under paragraph (g)(1)(i)(H), salary payments to a member of the candidate's family are personal use, unless the family member is providing *bona fide* services to the campaign. If a family member provides *bona fide* services to the campaign, any salary payment in excess of the fair market value of the services provided is personal use. This rule is consistent with the Commission's current policy, as set out in Advisory Opinion 1992–4.

Several commenters urged the Commission to take a stricter approach. Two suggested that the Commission prohibit salary payments for any member of the candidate's household unit, because the salary could be used to pay the living expenses of the candidate. Other commenters urged the Commission to prohibit salary payments unless the family member was hired to perform services that he or she previously provided in a professional capacity outside the campaign. Some commenters expressed concern that the fair market value standard could be abused.

In contrast, a number of commenters urged the Commission to allow these payments. Two commenters questioned why family members should be treated any differently from other employees who provide legitimate services to the campaign. One commenter said the test should be whether the family member is actually working for the campaign. If so, salary payments should be allowed.

The Commission agrees with those commenters that argue that family members should be treated the same as other members of the campaign staff. So long as the family member is providing *bona fide* services to the campaign, salary payments to that family member should not be considered personal use. However, the Commission believes these payments should be limited to the fair market value of the services provided. Consequently, the final rules treat salary payments in excess of that amount as personal use.

9. Additional Issues. Both the Notice of Proposed Rulemaking and the Request for Additional Comments proposed to treat the use of campaign funds to pay the candidate a salary as personal use. This rule would have the effect of prohibiting candidate salaries, and would resolve an issue raised in Advisory Opinion 1992–1. The

Commission received numerous comments on this provision.

Several commenters objected to this provision and urged the Commission to allow candidate salaries. Most said that a prohibition would aggravate existing inequities between incumbents and challengers and would create a wealth test or property qualification for running for office. These commenters urged the Commission to allow candidate salaries in order to level the playing field and open up the election process to candidates of modest means. One commenter strongly believes a candidate should be able to receive a reasonable salary based on his or her experience and the services he or she renders to the campaign. Many different proposals for determining the amount of a candidate's salary were suggested.

Several other commenters questioned why full disclosure of salary payments would not adequately prevent any unfairness to campaign contributors. Another commenter argued that candidates are essentially employees of the party by whom they are nominated, and, as such, the party should be permitted to pay the candidate a salary.

In contrast, two commenters strongly supported a prohibition on candidate salaries, saying such a prohibition is required under section 439a. They urged the Commission to adopt a blanket rule prohibiting the use of campaign funds for this purpose, because permitting salaries effectively allows the candidate to use campaign funds to pay his or her personal living expenses and does away with the personal use prohibition. These commenters acknowledged that the inequities that exist between incumbents and challengers is a problem that needs to be rectified. Nevertheless, they said this inequity cannot be resolved in this rulemaking because nothing in section 439a requires a level playing field. They also argue that nothing in section 439a justifies distinguishing between incumbents and other candidates, and since Members of Congress would not be allowed to take a salary from their campaigns in addition to their Congressional salary, the statute requires a prohibition on salary payments to the candidate.

One of these two commenters also urged the Commission not to try to level the playing field by reversing what the commenter described as the Commission's policy of requiring corporate employees to take an unpaid leave of absence to campaign for office. This commenter also said that a means test for payment of candidate salaries would not work.

The Commission took up the candidate salary issue when it considered the final rules, but could not reach a majority decision by the required four affirmative votes. See 2 U.S.C. § 437c(c). Consequently, this issue has not been addressed in the final rules.

Paragraph (g)(1)(ii)

Paragraph (g)(1)(ii) explains how the Commission will address other uses of campaign funds not covered by the *per se* list of examples. If an issue comes before the Commission as to whether a use not listed in paragraph (g)(1)(i) is personal use, the Commission will determine whether the use is for an expense that would exist irrespective of the candidate's campaign or duties as a Federal officeholder. If so, it will be personal use unless some other specific exception applies. These determinations will be made on a case by case basis. Committees should look to the general definition for guidance in determining whether uses not listed in paragraph (g)(1)(i) are personal use.

Two commenters expressed concerns with this approach. One said that case by case review will cause great difficulty, and urged the Commission to allow candidates to explain the campaign relationship of any use that may appear to be personal. This commenter also argued that if the use reasonably appears to have a campaign relationship, it should not be personal use. The other commenter said that this provision leaves the question of personal use unsettled, and urged the Commission to affirm that candidates have wide discretion over the use of campaign funds and treat uses outside the categories contained in the rule as presumptively permissible.

In contrast, a third commenter expressed support for this provision if it is implemented in conjunction with a general definition of personal use that uses the irrespective standard.

The Commission is aware of the problems of case by case decisionmaking. It has sought to minimize these problems by incorporating a list of examples that specifically addresses the most common personal use issues into the final rules.

However, the Commission cannot anticipate every type of expense that will raise personal issues. Thus, the Commission cannot create a list that addresses every situation. Furthermore, some expenses that do raise personal use issues cannot be characterized as either personal or campaign related in the majority of situations, so they cannot be addressed in a *per se* list. Consequently, it is necessary to have a plan for addressing situations not covered by the *per se* list. The Commission is including paragraph (g)(1)(ii) in the rules to provide guidance to the regulated community as to how these situations will be handled. Should a personal use issue arise, the candidate and committee will have ample opportunity to present their views. The Commission, however, reaffirms its long-standing opinion that candidates have wide discretion over the use of campaign funds. If the candidate can reasonably show that the expenses at issue resulted from campaign or officeholder activities, the Commission will not consider the use to be personal use.

The Notice of Proposed Rulemaking sought comments on other uses of campaign funds that sometimes raise personal use issues. In particular, the Commission encouraged commenters to submit their views on when the use of campaign funds for legal expenses, meal expenses, travel expenses and vehicle expenses would be personal use.

Because the use of campaign funds for these expenses can raise serious personal use issues, the Commission attempted to draft specific provisions on these uses and incorporate them into section 113.1(g)(1)(i). However, the Commission's efforts to craft language that would distinguish permissible uses from those subject to the prohibition generated rules that could have proved very confusing for the regulated community. Consequently, the Commission opted for a simpler approach. The Commission will address any issues raised by the use of campaign funds for these expenses by applying the general definition on a case by case basis. Thus, the use of campaign funds for these expenses will be personal use if the expense would exist irrespective of the candidate's campaign or duties as a Federal officeholder.

Legal, meal, travel and vehicle expenses are listed under paragraph (g)(1)(ii) as examples of uses that will be reviewed on a case by case basis. The Commission has inserted this list in the final rules in order to make it clear how issues involving the use of campaign funds for these expenses will be handled. These provisions, and the comments received in response to the NPRM, are discussed in detail below.

1. Legal expenses. Paragraph (g)(1)(ii)(A) indicates that issues regarding the use of campaign funds for legal expenses will be addressed on a case by case basis using the general definition of personal use. One commenter argued that legal expenses should be *per se* personal use except when they are incurred in ensuring compliance with the election laws. This commenter also urged the Commission

to prohibit contributions to the legal defense funds of other candidates.

Treating legal expenses other than those incurred in ensuring compliance with the election laws as *per se* personal use is too narrow a rule. A committee or a candidate could incur other legal expenses that arise out of campaign or officeholder activities but are not related to compliance with the FECA or other election laws. For example, a committee could incur legal expenses in its capacity as the employer of the campaign staff, or in its capacity as a contracting party in its dealings with campaign vendors. Consequently, the Commission has decided that issues raised by the use of campaign funds for a candidate's or committee's legal expenses will have to be addressed on a case by case basis.

However, legal expenses will not be treated as though they are campaign or officeholder related merely because the underlying legal proceedings have some impact on the campaign or the officeholder's status. Thus, legal expenses associated with a divorce or charges of driving under the influence of alcohol will be treated as personal, rather than campaign or officeholder related.

2. Meal Expenses. Paragraph (g)(1)(ii)(B) indicates that issues regarding the use of campaign funds for meal expenses will be addressed on a case by case basis using the general definition of personal use. One commenter thought payments for meals should be strictly limited, and recommended that the Commission prohibit the use of campaign funds to pay for meals that are not directly related to the campaign. Another commenter suggested the Commission follow the Internal Revenue Service approach for business meals, and allow the use of campaign funds if guests are present. Under this approach, family members would not qualify as guests, so campaign funds could not be used to pay for their meals.

A third commenter expressed doubt that persons who use campaign funds for entertainment actually discuss campaign business while the event is going on. The commenter said that, although these situations often involve face to face fundraising and therefore are campaign related, the Commission should require candidates to show that the event is overwhelmingly campaign related in order to eliminate borderline cases. A fourth commenter would require that the meal involve an explicit solicitation of contributions in order to allow use of campaign funds.

In contrast, two commenters objected to limits on the use of campaign funds for these purposes.

The Commission is aware of the potential for abuse in the use of campaign funds to pay for meal expenses. However, the Commission sought to establish a rule that would effectively curb these abuses without making it difficult to conduct legitimate campaign or officeholder related business. Consequently, the Commission has decided to address these situations on a case by case basis using the general definition of personal use.

Under this approach, the use of campaign funds for meals involving face to face fundraising would be permissible. Presumably, the candidate would not incur the costs associated with this activity if he or she were not a candidate. In contrast, the use of campaign funds to take the candidate's family out to dinner in a restaurant would be personal use, because the family's meal expenses would exist even if no member of the family were a candidate or an officeholder.

It should be noted that this provision applies to meal expenses incurred outside the home. It does not apply to the use of campaign funds for household food items, which are covered by section 113.1(g)(1)(i)(A). Nor does it apply to subsistence expenses incurred during campaign or officeholder related travel. These expenses will be considered part of the travel expenses addressed by paragraph (g)(1)(ii)(C).

3. Travel Expenses. Paragraph (g)(1)(iii)(C) indicates that the use of campaign funds for travel expenses, including subsistence expenses incurred during travel, will be addressed on a case by case basis using the general definition of personal use.

One commenter said that the rules should prohibit the use of campaign funds for expenses that are collateral to travel, such as greens fees, ski lift tickets and court time. This commenter also said the rules should prohibit the use the campaign funds for pleasure or vacation trips or extensions of campaign or officeholder related trips. Another commenter urged the Commission to adopt a two part test for travel expenses which would allow them only if the travel is predominantly for permissible purposes and the trip is necessary for the fulfillment of those purposes. This commenter also urged the Commission to prohibit the payment of per diems, since they allow campaigns to use campaign funds without disclosing how they are used.

As will be discussed further below (see section 5 on ''mixed use''), the final rules do prohibit the use of campaign funds for personal expenses collateral to campaign or officeholder related travel by treating these uses as personal use unless the committee is reimbursed. However, the Commission has decided against adopting the two part test suggested, because it would require closer review of a candidate's or officeholder's travel to determine the predominant purpose or necessity of a particular trip. This approach has been rejected, and is a departure from the analysis under the irrespective standard.

The Commission has also decided against imposing limits on per diem payments, since the Commission has a long-standing policy of allowing these payments, see Advisory Opinion 1984–8, and because these limits would be impractical and would impose unreasonable burdens on candidates and committees. However, per diem payments must be used for expenses that meet the general standard. They cannot be converted to personal use.

4. Vehicle Expenses. Paragraph (g)(1)(ii)(D) indicates that issues regarding the use of campaign funds for vehicle expenses will be addressed on a case by case basis using the general definition of personal use. However, the rule contains an exception for vehicle expenses of a *de minimis* amount. Thus, vehicle expenses that would exist irrespective of the candidate's campaign or duties as a holder of Federal office will be personal use, unless they are a *de minimis* amount. If these expenses exceed a *de minimis* amount, the person(s) using the vehicle for personal purposes must reimburse the committee for the entire amount associated with the personal use. See section 5 on ''mixed use,'' below.

One commenter urged the Commission to make the vehicle expense provision more specific by defining *de minimis* and setting a specific cents per mile reimbursement amount. This commenter also urged the Commission to include a limit on payments for the candidate's personal vehicle.

The Commission is sensitive to the difficulties that candidates and committees would face in completely eliminating all vehicle uses that confer a personal benefit. Consequently, the Commission has sought to carefully craft a rule that will provide a mechanism for addressing apparent abuses of campaign vehicles without imposing unrealistic burdens on candidates and committees. The Commission has decided not to impose the more specific requirements

suggested by the commenter. Instead, it will review the facts of a particular case in order to determine whether personal use has occurred. The Commission will make use of the *de minimis* concept by assessing whether the amount of expenses associated with personal activities is significant in relation to the overall vehicle use.

While the comments focused on the use of campaign funds to pay for expenses associated with the candidate's personal vehicle, the rule applies to the use of campaign funds for expenses associated with any vehicle, regardless of whether it is owned or leased by the committee or the candidate. Because the expenses associated with a personal vehicle usually exist irrespective of the candidacy or the officeholder's duties, the use of campaign funds for these expenses will generally be considered personal use.

5. *Mixed Use.* Paragraphs (g)(1)(ii) (C) and (D) also explain the Commission's policy regarding the use of campaign funds for travel and vehicle expenses associated with a mixture of personal and campaign or officeholder related activities.

Under paragraph (c), if a campaign committee uses campaign funds to pay expenses associated with travel that involves both personal activities and campaign or officeholder related activities, the incremental expenses that result from the personal activities are personal use, unless the person(s) benefiting from this use reimburse(s) the campaign within thirty days for the amount of the incremental expenses.

Paragraph (D) contains a similar rule regarding vehicle expenses. However, this rule does not apply to vehicle expenses that are a *de minimis* amount. If the vehicle expenses associated with personal activities exceed a *de minimis* amount, the person(s) using the vehicle for personal activities must reimburses(s) the campaign within thirty days for the entire amount associated with the personal activities. Otherwise, the use of campaign funds for the vehicle expenses is personal use. This approach is consistent with Advisory Opinions 1984–59 and 1992–12.

For example, under paragraph (C), if a Member of Congress travels to Florida to make a speech in his or her official capacity, and stays an extra week there to enjoy a vacation, the Member's campaign committee can pay the Member's transportation costs and the subsistence costs necessary for making the speech. However, if the committee pays the cost of the entire trip, including the expenses incurred during the extra week of vacation, the Member is required to reimburse the committee for the expenses incurred during this extra week. This includes the hotel and meal expenses for the extra week along with any entertainment expenses incurred during this time that are included in the amount paid by the committee.

Of course, the reimbursement need only cover the incremental costs of the personal activities, that is the increase in the total cost of the trip that is attributable to the extra week of vacation. Thus, if the vacation and the speech take place in the same location, the Member is not required to reimburse the committee for any portion of the airfare, since that expense would have been incurred even if the trip had not been extended. See Advisory Opinion 1993–6.

On the other hand, if the Member travels to one location to make the speech, travels on to another location for the vacation, and then returns to his or her point of origin, the Member is required to reimburse the committee for the increase in transportation costs attributable to the vacation leg of the trip. The increased costs would be calculated by determining the cost of a fictional trip that includes only the campaign and officeholder related stops, that is, a trip that starts at the point of origin, goes to every campaign related or officeholder related stop, and returns to the point of origin. The difference between the transportation costs of this fictional, campaign related trip and the total transportation costs of the trip actually taken is the incremental cost attributable to the personal leg of the trip.

These rules apply to any Federal candidate or officeholder. Thus, challengers are also required to reimburse their committees for any personal travel expenses that are paid with campaign funds.

These principles also apply to vehicle expenses for a trip that involves both campaign or officeholder related activities and personal activities in excess of a *de minimis* amount. If the personal activities are more than a *de minimis* portion of the trip, the person using the vehicle is required to reimburse the committee for the difference between the total vehicle expenses incurred during the trip and the amount that would be incurred on a fictional trip that only includes the campaign or officeholder related stops. Section 106.3(b) of the Commission's regulations sets out a method for allocating campaign and non-campaign related vehicle expenses. Advisory Opinion 1992–34 contains an example of how this allocation mechanism works.

The Commission notes that if the person benefiting from the use of campaign funds for personal travel or vehicle expenses makes a timely reimbursement under this section, that reimbursement is not a contribution under the Act. However, if a reimbursement required under this section is made by a person other than the person benefiting, it may be a contribution under § 113.1(g)(6). Section 113.1(g)(6) will be discussed further below.

Section 113.1(g)(2) Charitable Donations

Section 113.1(g)(2) indicates that donations of campaign funds to organizations described in section 170(c) of the Internal Revenue Code are not personal use, so long as the candidate does not receive compensation from the recipient organization before it has expended the entire amount donated for purposes unrelated to the candidate's personal benefit. Compensation does not include reimbursements for expenses ordinarily and necessarily incurred on behalf of such organization by the candidate. This provision is based on the approach taken by the Commission in Advisory Opinion 1983–27, and is consistent with subsequent Commission treatment of charitable donations made with campaign funds. See Advisory Opinions 1986–39 and 1993–22. The Commission received no comments on this provision.

Section 113.1(g)(3) Transfers of Campaign Assets

Under § 113.1(g)(3), the sale or other transfer of a campaign asset is not personal use so long as the transfer is for fair market value. This provision seeks to limit indirect conversions of campaign funds to personal use. An indirect conversion occurs when a committee sells an asset for less than the asset's actual value, thereby essentially giving part of the asset to the purchaser at no charge. Section 113.1(g)(3) limits these conversions by requiring these transactions be for fair market value.

Section 113.1(g)(3) also seeks to limit indirect conversions to personal use by ensuring that any depreciation in the value of an asset being transferred is properly allocated between the committee and the purchaser. Many assets such as vehicles and office equipment depreciate dramatically immediately after they are purchased. If a campaign committee purchases an asset, uses it during a campaign season, and then sells it to the candidate at its

depreciated fair market value, the candidate receives the asset at a substantially reduced cost but with significant time remaining in its useful life. Thus, the cost of the depreciation falls disproportionately upon the campaign committee. This would effectively be a conversion of campaign funds to personal use.

Section 113.1(g)(3) addresses this situation by requiring that any depreciation that takes place before the transfer be allocated between the committee and the purchaser based on the useful life of the asset. Thus, the committee should absorb only that portion of the depreciation that is attributable to the time period during which it uses the asset. This approach is consistent with Advisory Opinion 1992–12, in which the Commission required a Congressman who was assuming a lease of a van from his campaign committee to ''accept a pro rata share of the financial obligations and charges attending the lease * * *.'' The Commission also noted that ''the lease may provide for a discount on the purchase price of the van at the conclusion of the agreement. In that event, a portion of the discount may belong to the committee.'' Advisory Opinion 1992–12, n.3.

Two commenters expressed views on this provision. One commenter argued that, even if the asset's depreciation is allocated between the committee and the purchaser, the purchaser is still getting a bargain. This commenter urged the Commission to require the committee to sell its assets to third parties and use the proceeds to pay campaign debts or to make contributions to charities.

The Commission has decided not to require committees to sell their assets only to third parties, because such a requirement would not serve the purposes of the personal use prohibition. Section 439a prohibits conversions of campaign funds to any person's personal use. Thus, a violation of section 439a occurs whenever an asset is transferred for less than fair market value. It makes no difference whether the purchaser is the candidate or an unrelated third party. Consequently, a rule that requires that all transfers of campaign assets be for fair market value will fully serve the purposes of section 439a.

Section 113.1(g)(4) Gifts

As indicated above, the final rules generally apply with equal force to uses of campaign funds that benefit third parties as they do to uses of campaign funds that benefit the candidate or a member of the candidate's immediate family. However, the final rules also contain a provision that allows a committee to use campaign funds to benefit constituents or supporters on certain occasions without violating the personal use prohibition. Section 113.1(g)(4) indicates that gifts or donations of nominal value given on special occasions to persons other than family members of the candidate are not personal use. This will allow a committee to use campaign funds to send flowers to a constituent's funeral without violating the personal use prohibition.

The Commission recognizes that candidates and officeholders frequently send small gifts to constituents and supporters on special occasions as gestures of sympathy or goodwill, and that such an expense would not exist irrespective of the candidate's or officeholder's status. The Commission has included this provision in the rules to specifically indicate that the use of campaign funds for this purpose is permitted.

However, the exception does not cover gifts that are of more than nominal value. For example, using campaign funds for other expenses associated with special occasions, such as the funeral and burial expenses covered under section 113.1(g)(1)(i)(B), would be personal use. Nor does this exception allow the committee to use campaign funds to send gifts to members of the candidate's family. Presumably, the candidate would give such a gift irrespective of whether he or she were a candidate or Federal officeholder. Therefore, the use of campaign funds for such a gift would be personal use.

Section 113.1(g)(5) Political or Officially Connected Expenses

Section 113.1(g)(5) explains how the personal use rules interact with the rules of the U.S. House of Representatives and the United States Senate. Under House rules, a Member ''shall convert no campaign funds to personal use * * * and shall expend no funds from his campaign account not attributable to bona fide campaign or political purposes.'' House Rule 43, clause 6. Senate Rule 38 also prohibits personal use, but allows a Member to use campaign funds to defray ''expenses incurred * * * in connection with his official duties.'' Senate Rule 38, clause 1(a). Thus, these rules allow Members to use campaign funds for what are described as ''political'' and ''officially connected'' expenses. Several commenters have raised the question of how the personal use rules would apply to the use of campaign funds for these purposes.

Section 113.1(g)(5) indicates that the use of campaign funds for a political or officially connected expense is not personal use to the extent that it is an expenditure under 11 CFR 100.8 or an ordinary and necessary expense incurred in connection with the duties of a holder of Federal office. The rule also reiterates that any use of funds that would be personal use under § 113.1(g)(1) will not be considered an expenditure or an ordinary and necessary expense incurred in connection with the duties of a Federal officeholder.

One commenter urged the Commission to be consistent with House and Senate rules in this area, saying that, since House rules specifically allow Members to use campaign funds for political expenses, the Commission's rules should specifically exclude these uses from the definition of personal use. Two other commenters agreed, and urged the Commission not to introduce additional confusion into this area.

In contrast, two commenters rejected the suggestion that the Commission should defer to House and Senate rules in this area. They asserted that enforcement of the personal use ban is the Commission's responsibility, and that, since Congressional precedents are based on rules with different language than section 439a, the Commission should not look to those precedents for guidance.

Other commenters expressed their views on the specific language of the rule. One commenter urged the Commission to treat what the commenter referred to as campaign disbursements and political disbursements as synonymous, and to treat what the commenter referred to as political and officially connected expenses as permissible ordinary and necessary expenses under section 439a. Another commenter criticized the provision as tautological, and cited this as an area in which the Commission should reaffirm that candidates and officeholders have wide discretion.

Two commenters said the rule is an improvement over a previous draft that was read to have ceded authority for determining whether uses by incumbents are personal use to the House and Senate. However, one said that the rule still defers too much to Congress because it still says political and officially connected expenses are not personal use to the extent that they are expenditures or the ordinary and necessary expenses of a Federal officeholder. The other commenter said the rule is acceptable so long as the list of uses is truly a per se list.

The Commission recognizes that the existence of two sets of rules creates the potential for confusion. However, the Commission cannot create a blanket exclusion from personal use for all uses that qualify as a political or officially connected expense under Congressional rules. Congress has given the Commission the authority to interpret and enforce the personal use prohibition in section 439a. Creating an exclusion for all political or officially connected expenses would effectively be an abdication of that authority, particularly since section 439a uses different standards than House and Senate rules for determining whether a particular use of campaign funds is permissible.

Nevertheless, the Commission anticipates that, in most circumstances other than those specifically addressed in the rules, political and officially connected expenses will be considered ordinary and necessary expenses incurred in connection with the duties of a Federal officeholder, as that term is used under the FECA. As such, they will not be personal use under § 113.1(g)(1). In other circumstances, political and officially connected expenses may be expenditures under the Act, and therefore clearly permissible. In short, the Commission does not anticipate a significant number of conflicting results under these rules.

The Commission notes that the FY 1991 Legislative Branch Appropriations Act (Pub. L. 101–520) provides that ''official expenses'' may not be paid from excess campaign funds. Thus, even though 2 U.S.C. § 439a, House Rule 43, and Senate Rule 38 contemplate the use of campaign funds for ''ordinary and necessary expenses,'' ''political purposes,'' and expenses ''in connection with'' official duties, guidance regarding the scope of the Legislative Branch Appropriations Act provision referred to above should be sought by persons covered.

Section 113.1(g)(6) Third Party Payments of Personal Use Expenses

Section 113.1(g)(6) sets out Commission policy on payments for personal use expenses by persons other than the candidate or the candidate's committee. Generally, payments of expenses that would be personal use if made by the candidate or the candidate's committee will be considered contributions to the candidate if made by a third party. Consequently, the amount donated or expended will count towards the person's contribution limits. However, no contribution will result if the payment would have been made irrespective of the candidacy. The final rule contains three examples of payments that will be considered to be irrespective of the candidacy.

Several commenters expressed views on this provision. Three commenters objected to it, arguing that it is inconsistent to say that the use of campaign funds for certain expenses is personal use when those expenses are not campaign related, while at the same time saying that payments for those same expenses by third parties are contributions because they are being made for the purpose of influencing an election. Two of these commenters recommended that the Commission reverse its existing policy and allow corporate employers to pay employee-candidates a salary during the campaign in order to level the playing field.

Another commenter objected to this provision, saying that third parties should be allowed to pay the personal living expenses of a candidate who loses his or her salary upon becoming a full time candidate, subject to three conditions: (1) The payments are disclosed and limited as in-kind contributions under the FECA; (2) the payments are for essential living expenses; and (3) the total payments and the candidate's salary during the campaign period do not exceed his or her average monthly salary over the previous year, or that of an incumbent Member of Congress.

In contrast, one commenter approved of this provision. Another commenter urged the Commission to flatly prohibit these payments rather than treating them as contributions, saying that third parties should not be able to label as contributions payments that could not be made by the committee itself.

The Commission has decided to treat payments by third parties for personal use expenses as contributions subject to the limits and prohibitions of the Act, unless the payment would have been made irrespective of the candidacy. If a third party pays for the candidate's personal expenses, but would not ordinarily have done so if that candidate were not running for office, the third party is effectively making the payment for the purpose of assisting that candidacy. As such, it is appropriate to treat such a payment as a contribution under the Act. This rule follows portions of Advisory Opinions 1982–64, 1978–40, 1976–70 and the Commission's response to Advisory Opinion Request 1976–84. The Commission understands the concerns about the inequities between incumbents and challengers expressed by the commenters in relation to this provision and other aspects of this rulemaking. However, the FECA is not intended to level the playing field between incumbents and challengers. See *Buckley* v. *Valeo*, 424 U.S. 1, 48–49 (1976).

If the payment would have been made even in the absence of the candidacy, the payment should not be treated as a contribution. Section 113.1(g)(6) excludes payments that would have been made irrespective of the candidacy, and sets out three examples of such payments. These examples protect a wide range of payments of personal use expenses from being treated as contributions. Other situations will be examined on a case by case basis.

First, the final rule excludes payments to a legal expense trust fund established under House and Senate rules. House and Senate rules provide Members of Congress with a mechanism they can use to accept donations to pay for legal expenses. The final rule places donations to these funds outside the scope of the contribution definition of the FECA. Donations to other legal defense funds will be examined on a case by case basis.

Second, the final rule excludes payments made from the personal funds of the candidate, as defined in 11 CFR 110.10(b). Section 110.10 allows candidates for Federal office to make unlimited expenditures from personal funds, as defined in paragraph (b) of that section. Thus, if a payment by a third party is made with the candidate's personal funds, the payment will not be considered a contribution that is subject to the limits and prohibitions of the Act. Similarly excluded from contribution treatment under this provision are payments made from an account jointly held by the candidate and a member of the candidate's family.

Finally, the rule indicates that a third party's payment of a personal use expense will not be considered a contribution if payments for that expense were made by the third party before the candidate became a candidate. If the third party is continuing a series of payments that were made before the beginning of the candidacy, the Commission considers this convincing evidence that the payment would have been made irrespective of the candidacy, and therefore should not be considered a contribution. For example, if the parents of a candidate had been making college tuition payments for the candidate's children, the parents could continue to do so during the candidacy without making a contribution.

It should be noted, however, that the exclusion for payments made before the candidacy contains a caveat for

compensation payments. Compensation payments that were made before the candidacy and continue during the candidacy will be considered contributions to the candidate unless three conditions are met: the compensation results from *bona fide* employment that is genuinely independent of the candidacy, the compensation is exclusively in consideration of services provided by the candidate as part of the employment, and the compensation does not exceed the amount that would be paid to a similarly qualified person for the same work over the same period of time. The Commission assumes that, when these three conditions exist, the compensation payment would have been made irrespective of the candidacy and should not be treated as a contribution. This rule is based on Advisory Opinion 1979–74, and is consistent with Advisory Opinions 1977–45, 1977–68, 1978–6 and 1980–115.

Section 113.1(g)(7) Members of the Candidate's Family

Section 113.1(g)(7) lists the persons who are members of the candidate's family for the purposes of §§ 113.1(g) and 100.8(b)(22). This list is significant for several provisions of the rules. Under § 113.1(g)(7), the candidate's family includes those persons traditionally considered part of an immediate family, regardless of whether they are of whole or half blood. Consistent with the laws of most states, the rules make no distinction between biological relationships and relationships that result from adoption or marriage. The grandparents of the candidate are also considered part of the candidate's family. Finally, the candidate's family also includes a person who has a committed relationship with the candidate, such as sharing a household and mutual responsibility for each other's welfare or living expenses. These persons will be treated as the equivalent of the candidate's spouse for the purposes of these rules.

Section 113.2 Use of Funds (2 U.S.C. 439a)

The final rules also contain an amendment to the list of permissible uses of excess campaign funds contained in 11 CFR 113.2. The amendment specifically indicates that certain travel costs and certain office operating expenditures will be considered ordinary and necessary expenses incurred in connection with the duties of a Federal officeholder.

The costs of travel for a Federal officeholder and an accompanying spouse who are participating in a function that is directly connected to *bona fide* official responsibilities will be considered ordinary and necessary expenses. 11 CFR 113.2(a)(1). The rule cites fact-finding meetings and events at which the officeholder makes an appearance in an official capacity as examples of functions covered by the rule. Note that spouse travel for campaign purposes continues to be a permissible expense.

In addition, the costs of winding down the office of a former Federal officeholder for six months after he or she leaves office will be considered ordinary and necessary expenses. 11 CFR 113.2(a)(2). Consequently, the use of excess campaign funds to pay for these expenses is permissible.

The Commission notes that the FY 1991 Legislative Branch Appropriations Act (Pub. L. 101–520) provides that ''official expenses'' may not be paid from excess campaign funds. Thus, even though 2 U.S.C. § 439a, House Rule 43, and Senate Rule 38 contemplate the use of campaign funds for ''ordinary and necessary expenses,'' ''political purposes,'' and expenses ''in connection with'' official duties, guidance regarding the scope of the Legislative Branch Appropriations Act provision referred to above should be sought by persons covered.

1. Travel Costs. Several commenters criticized the travel cost provision. One commenter thought Members of Congress received a stipend for these expenses, and argued that campaign funds should not be used for this purpose. Another commenter urged the Commission to only allow the use of campaign funds for travel between Washington, D.C. and the Member's district. A third commenter argued that the provision allowing travel expenses for a Member's spouse should be deleted because it creates confusion, and opens a loophole because it does not require the Member to demonstrate that the spouse participated in the official function.

One commenter urged the Commission to allow the use of campaign funds to defray expenses connected to officeholder duties, including travel, as permitted under House rules.

The Commission has concluded that the expenses of both the officeholder and the officeholder's spouse should be permitted. If an officeholder incurs expenses in traveling to a function that is directly connected to his or her *bona fide* official responsibilities, those expenses clearly would not exist irrespective of his or her duties as a Federal officeholder. As such, the use of campaign funds for those expenses would not be personal use under section 113.1(g)(1).

The Commission also recognizes that an officeholder's spouse is often expected to attend these functions with the officeholder. See Advisory Opinion 1981–25. In this context, the spouse's attendance alone amounts to a form of participation in the function, even if the spouse has no direct role in the activities that take place during the event. Consequently, the Commission has decided that the rule should specifically indicate that the expenses of an accompanying spouse can be paid with campaign funds when an officeholder travels to attend an official function.

This provision also helps to clarify the relationship between the personal use rules and the rules of the House and Senate on the use of campaign funds for travel. Although Members receive appropriated funds for certain travel expenses, House and Senate rules also allow them to pay for certain other expenses with campaign funds. The amendments to § 113.2 make it clear that, so long as the travel is for participation in a function connected to the Member's official responsibilities, the permissibility of this use is not affected by the personal use rules.

Advisory Opinion 1980–113 indicated that campaign funds could be used to defray expenses incurred in carrying out the duties of a state officeholder. That opinion also suggested that campaign funds could be used to defray the travel expenses of the spouse of such an officeholder if the spouse's expenses are incident to the duties of the state officeholder. However, in Advisory Opinion 1993–6, the Commission explicitly superseded Advisory Opinion 1980–113 to the extent that it allowed the use of campaign funds ''for expenses related to that person's position as a holder of state office or any office which is not a Federal office as defined in the Act.'' Advisory Opinion 1993–6, n.3. The amendments to § 113.2 are consistent with Advisory Opinion 1993–6. As revised, § 113.2(a)(1) does not permit the use of campaign funds for travel expenses associated with official responsibilities other than those of a Federal officeholder.

Finally, the Commission has not limited this rule to expenses associated with travel between a Member's district and Washington, D.C. The Commission recognizes that travel to other locations may be directly connected to a Member's *bona fide* official responsibilities. So long as the travel is

so connected, the use of campaign funds to pay the expenses of that travel will also be permissible.

2. Winding Down Costs. Six commenters expressed views on the provision regarding winding down costs. 11 CFR 113.2(a)(2). One commenter disagreed with the proposed rule, and argued that former officeholders should not be allowed to use campaign funds for this purpose. Another commenter agreed that a candidate should not be allowed to retain and use campaign funds beyond a certain reasonable period after the campaign to pay debts and operating expenses. This commenter suggested that any funds that remain unused after that time period should be returned to donors or taxed at one hundred percent.

A third commenter urged the Commission to allow these uses only for incumbents who lose their seat, and recommended against allowing Members of Congress to build up a large treasury and then use that treasury after voluntarily leaving Federal office.

Three commenters agreed these uses should be allowed, but urged the Commission to approve a rule that limits the time period to sixty days.

The Commission believes the costs of winding down the office of a former Federal officeholder are ordinary and necessary expenses within the meaning of section 439a. See Advisory Opinion 1993–6. Therefore, the use of campaign funds to pay these costs is permissible under the FECA. Furthermore, there is no basis in the Act for distinguishing between winding down costs incurred by officeholders who lose their seats and those incurred by officeholders who leave office for other reasons. The costs incurred by either kind of former officeholder are equally permissible.

The Commission initially proposed a sixty day time period. Since this process often takes longer than anticipated, the Commission is inclined to provide former officeholders with some leeway in the use of funds for these purposes. Consequently, the Commission has extended the period to six months to ensure that former officeholders have ample time to close down their offices. It should also be noted that, as written, this provision acts as a safe harbor. It does not preclude a former officeholder who can demonstrate that he or she has incurred ordinary and necessary winding down expenses more than six months after leaving office from using campaign funds to pay those expenses.

Part 100—Scope and Definitions

Section 100.8 Expenditure (2 U.S.C. 431(9))

Current § 100.8(b) of the Commission's regulations excludes certain disbursements from the definition of expenditure. Paragraph (b)(22) of that section specifically excludes payments by a candidate from his or her personal funds, as defined in 11 CFR 110.10(b), for routine living expenses which would have been incurred without candidacy. Thus, a candidate can pay his or her routine living expenses from personal funds without making an expenditure that must be reported under the Act.

New language has been added to § 100.8(b)(22) that indicates that payments for routine living expenses by a member of the candidate's family are not expenditures if made from an account held jointly with the candidate, or if the expenses were paid by the family member before the candidate became a candidate. The revised rule treats payments from an account jointly held by the candidate and a family member the same as payments made from the candidate's personal funds, and excludes them from the expenditure definition. Similarly, the rule assumes that payments by a family member that are a continuation of payments made before the candidacy are not in connection with the candidacy, and should not be treated as expenditures.

Under this section, payments from an account that contains only the candidate's personal funds will be exempt from the definition of expenditure even if the payment is made by another person such as a housekeeper or an accountant who has access to the account in order to pay the candidate's routine living expenses. These payments will also be exempt if the housekeeper makes the payment from an account jointly held by the candidate and a member of the candidate's family. The ability of a person who is not a family member to make payments from the account will not change otherwise exempt payments from the account into contributions.

However, if the account is jointly held by the candidate and someone who is not a member of the candidate's family, or contains the funds of such a person, the exemption in § 100.8(b)(22) does not apply, and payments from that account for the candidate's personal living expenses will be expenditures that have reporting consequences under the Act. These payments will also be in-kind contributions under section 113.1(g)(6), and will count towards the joint account holder's contribution limits. See 11 CFR 110.1.

This section has been revised to parallel new § 113.1(g)(6). One commenter expressed general support for this provision.

Part 104—Reports by Political Committees

Section 104.3 Contents of Reports (2 U.S.C. 434(b))

The Notice of Proposed Rulemaking invited commenters to submit their views on any other issues raised by this rulemaking. Several commenters suggested that the Commission amend its reporting requirements in order to administer the personal use prohibition. These commenters urged the Commission to require more detailed reporting of expenditures that would force committees to bear the burden of establishing a clear connection between each expenditure and a campaign event. One commenter cited meals as an example, saying that the Commission should require the candidate to explain how the meal was related to the campaign and why it was not personal use. Two of these commenters recommended that the Commission initiate a separate rulemaking to implement more detailed reporting requirements.

The Commission agreed that additional reporting may be useful in administering the personal use rules, and solicited comments in the RAC on how new reporting requirements could be crafted to be both useful and not overly burdensome. One commenter responded, recommending that the Commission require committees to provide a detailed description of the relationship between a use of campaign funds and the candidate's campaign or officeholder duties.

The Commission has concluded that any significant changes to the reporting requirements should be taken up as part of a comprehensive review of the recordkeeping and reporting regulations. Such a review is currently under way as a separate rulemaking.

Nevertheless, the Commission has identified one limited change that can be made now and will be useful in administering the personal use rules. Section 104.3 contains a new reporting requirement for authorized committees that itemize certain disbursements implicating the personal use prohibition. The new reporting requirement is set out in section 104.3(b)(4)(i)(B).

Revised section 104.3(b)(4)(i)(B) requires an authorized committee that itemizes a disbursement for which

partial or total reimbursement is expected under new § 113.1(g)(1)(ii) (C) or (D) to briefly explain the activity for which reimbursement will be made. For example, when itemizing a disbursement of funds for travel expenses associated with a trip that was partially campaign related and partially a personal trip for the candidate, the committee is required to indicate that the trip includes the cost of the candidate's personal trip, for which the committee is anticipating reimbursement. This information would be included on schedule B of Form 3. Committees receiving reimbursements will report them as ''other receipts'' on the Detailed Summary Page of Form 3.

If an individual benefiting from the use of campaign funds for personal travel or vehicle expenses makes a reimbursement under this section, the reimbursement is not a contribution under the Act, and the individual is not required to report the reimbursement. However, if the reimbursement is made by a person other than the person benefiting from the use of the funds, it may be a contribution by the person making the reimbursement under § 113.1(g)(6). If so, it must be reported as a contribution.

Certification of No Effect Pursuant to 5 U.S.C. § 605(b) (Regulatory Flexibility Act)

The attached final rules, if promulgated, will not have a significant economic impact on a substantial number of small entities. The basis of this certification is that the final rules are directed at individuals rather than small entities within the meaning of the Regulatory Flexibility Act. Therefore, no small entities will be significantly impacted.

List of Subjects

11 CFR Part 100

Elections.

11 CFR Part 104

Campaign funds, Political committees and parties, Political candidates.

11 CFR Part 113

Campaign funds, Political candidates, Elections.

For the reasons set out in the preamble, subchapter A, chapter I of title 11 of the Code of Federal Regulations is amended as follows:

PART 100—SCOPE AND DEFINITIONS (2 U.S.C. 431)

1. The authority citation for part 100 continues to read as follows:

Authority: 2 U.S.C. 431, 438(a)(8).

2. Section 100.8 is amended by revising paragraph (b)(22) to read as follows:

§ 100.8 Expenditure (2 U.S.C. 431(9)).

* * * * *

(b) * * *

(22) Payments by a candidate from his or her personal funds, as defined at 11 CFR 110.10(b), for the candidate's routine living expenses which would have been incurred without candidacy, including the cost of food and residence, are not expenditures. Payments for such expenses by a member of the candidate's family as defined in 11 CFR 113.1(g)(7), are not expenditures if the payments are made from an account jointly held with the candidate, or if the expenses were paid by the family member before the candidate became a candidate.

* * * * *

PART 104—REPORTS BY POLITICAL COMMITTEES (2 U.S.C. 434)

3. The authority citation for part 104 is revised to read as follows:

Authority: 2 U.S.C. 431(1), 431(8), 431(9), 432(i), 434, 438(a)(8), 438(b), 439a.

4. Section 104.3 is amended by revising the section heading and adding paragraph (b)(4)(i) (B) as follows:

§ 104.3 Contents of reports (2 U.S.C. 434(b), 439a).

* * * * *

(b) * * *

(4) * * *

(i) * * *

(A) * * *

(B) In addition to reporting the purpose described in 11 CFR 104.3(b)(4)(i)(A), whenever an authorized committee itemizes a disbursement that is partially or entirely a personal use for which reimbursement is required under 11 CFR 113.1(g)(1)(ii) (C) or (D), it shall provide a brief explanation of the activity for which reimbursement is required.

* * * * *

PART 113—EXCESS CAMPAIGN FUNDS AND FUNDS DONATED TO SUPPORT FEDERAL OFFICEHOLDER ACTIVITIES (2 U.S.C. 439a)

5. The authority citation for part 113 continues to read as follows:

Authority: 2 U.S.C. 432(h), 438(a)(8), 439a, 441a.

6. Section 113.1 is amended by adding paragraph (g) as follows:

§ 113.1 Definitions (2 U.S.C. 439a).

* * * * *

(g) *Personal use. Personal use* means any use of funds in a campaign account of a present or former candidate to fulfill a commitment, obligation or expense of any person that would exist irrespective of the candidate's campaign or duties as a Federal officeholder.

(1)(i) *Personal use* includes but is not limited to the use of funds in a campaign account for:

(A) Household food items or supplies;

(B) Funeral, cremation or burial expenses;

(C) Clothing, other than items of *de minimis* value that are used in the campaign, such as campaign ''T-shirts'' or caps with campaign slogans;

(D) Tuition payments, other than those associated with training campaign staff;

(E) Mortgage, rent or utility payments—

(*1*) For any part of any personal residence of the candidate or a member of the candidate's family; or

(*2*) For real or personal property that is owned by the candidate or a member of the candidate's family and used for campaign purposes, to the extent the payments exceed the fair market value of the property usage;

(F) Admission to a sporting event, concert, theater or other form of entertainment, unless part of a specific campaign or officeholder activity;

(G) Dues, fees or gratuities at a country club, health club, recreational facility or other nonpolitical organization, unless they are part of the costs of a specific fundraising event that takes place on the organization's premises; and

(H) Salary payments to a member of the candidate's family, unless the family member is providing *bona fide* services to the campaign. If a family member provides *bona fide* services to the campaign, any salary payment in excess of the fair market value of the services provided is personal use.

(ii) The Commission will determine, on a case by case basis, whether other uses of funds in a campaign account fulfill a commitment, obligation or expense that would exist irrespective of the candidate's campaign or duties as a Federal officeholder, and therefore are personal use. Examples of such other uses include:

(A) Legal expenses;

(B) Meal expenses;

(C) Travel expenses, including subsistence expenses incurred during travel. If a committee uses campaign funds to pay expenses associated with travel that involves both personal activities and campaign or officeholder related activities, the incremental expenses that result from the personal activities are personal use, unless the person(s) benefiting from this use

reimburse(s) the campaign account within thirty days for the amount of the incremental expenses; and

(D) Vehicle expenses, unless they are a *de minimis* amount. If a committee uses campaign funds to pay expenses associated with a vehicle that is used for both personal activities beyond a *de minimus* amount and campaign or officerholder related activities, the portion of the vehicle expenses associated with the personal activities is personal use, unless the person(s) using the vehicle for personal activities reimburse(s) the campaign account within thirty days for the expenses associated with the personal activities.

(2) *Charitable donations.* Donations of campaign funds or assets to an organization described in section 170(c) of Title 26 of the United States Code are not personal use, unless the candidate receives compensation from the organization before the organization has expended the entire amount donated for purposes unrelated to his or her personal benefit.

(3) *Transfers of campaign assets.* The transfer of a campaign committee asset is not personal use so long as the transfer is for fair market value. Any depreciation that takes place before the transfer must be allocated between the committee and the purchaser based on the useful life of the asset.

(4) *Gifts.* Gifts of nominal value and donations of a nominal amount made on a special occasion such as a holiday, graduation, marriage, retirement, or death are not personal use, unless made to a member of the candidate's family.

(5) *Political or officially connected expenses.* The use of campaign funds for an expense that would be a political expense under the rules of the United States House of Representatives or an officially connected expense under the rules of the United States Senate is not personal use to the extent that the expense is an expenditure under 11 CFR 100.8 or an ordinary and necessary expense incurred in connection with the duties of a holder of Federal office. Any use of funds that would be personal use under 11 CFR 113.1(g)(1) will not be considered an expenditure under 11 CFR 100.8 or an ordinary and necessary expense incurred in connection with the duties of a holder of Federal office.

(6) *Third party payments.* Notwithstanding that the use of funds for a particular expense would be a personal use under this section, payment of that expense by any person other than the candidate or the campaign committee shall be a contribution under 11 CFR 100.7 to the candidate unless the payment would have been made irrespective of the candidacy. Examples of payments considered to be irrespective of the candidacy include, but are not limited to, situations where—

(i) The payment is a donation to a legal expense trust fund established in accordance with the rules of the United States Senate or the United State House of Representatives;

(ii) The payment is made from funds that are the candidate's personal funds as defined in 11 CFR 110.10(b), including an account jointly held by the candidate and a member of the candidate's family;

(iii) Payments for that expense were made by the person making the payment before the candidate became a candidate. Payments that are compensation shall be considered contributions unless—

(A) The compensation results from *bona fide* employment that is genuinely independent of the candidacy;

(B) The compensation is exclusively in consideration of services provided by the employee as part of this employment; and

(C) The compensation does not exceed the amount of compensation which would be paid to any other similarly qualified person for the same work over the same period of time.

(7) *Members of the candidate's family.* For the purposes of section 113.1(g), the candidate's family includes:

(i) The spouse of the candidate;

(ii) Any child, step-child, parent, grandparent, sibling, half-sibling or step-sibling of the candidate or the candidate's spouse;

(iii) The spouse of any child, step-child, parent, grandparent, sibling, half-sibling or step-sibling of the candidate; and

(iv) A person who has a committed relationship with the candidate, such as sharing a household and having mutual responsibility for each other's personal welfare or living expenses.

7. In section 113.2, the introductory text is republished and paragraph (a) is revised to read as follows:

§ 113.2 Use of funds (2 U.S.C. 439a).

Excess campaign funds and funds donated:

(a) May be used to defray any ordinary and necessary expenses incurred in connection with the recipient's duties as a holder of Federal office, if applicable, including:

(1) The costs of travel by the recipient Federal officeholder and an accompanying spouse to participate in a function directly connected to *bona fide* official responsibilities, such as a fact-finding meeting or an event at which the officeholder's services are provided through a speech or appearance in an official capacity; and

(2) The costs of winding down the office of a former Federal officeholder for a period of 6 months after he or she leaves office; or

* * * * *

Dated: February 3, 1995.

Danny L. McDonald,

Chairman, Federal Election Commission.

[FR Doc. 95–3162 Filed 2–8–95; 8:45 am]

BILLING CODE 6715–01–M

Thursday
February 9, 1995

Part IV

Department of the Interior

Bureau of Land Management

43 CFR Part 2920

Procedures for Action on Use, Occupancy and Development; Unauthorized Use; and Cost Reimbursement for Processing and Monitoring Permits and Leases for Use of Public Lands; Proposed Rule

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2920

[WO–350–1430–00–24 1A]

RIN: 1004–AB51

Permits, Leases and Trespass; Procedures for Action on Use, Occupancy and Development; Unauthorized Use; and Cost Reimbursement for Processing and Monitoring Permits and Leases for Use of Public Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Further proposed rule.

SUMMARY: This further proposed rule on permits and leases for use of public lands administered by the Bureau of Land Management (BLM) amends the proposed rule published in the **Federal Register** on November 21, 1990 (55 FR 48810). The 1990 rule proposed to amend the regulations on leases, permits, easements, and trespass in 43 CFR parts 2920 and 9230, currently in effect. This further proposed rule would create two categories of permits for proposed uses of public lands: ''minimum impact permits'' and ''full permits.'' ''Minimum impact permits'' would be issued for activities that are likely to have a minimal impact on the public lands and their resources. BLM decisions to issue minimum impact permits would become effective immediately upon signature by the BLM authorized officer and would not be subject to the general appeals process provided in 43 CFR 4.21(a). ''Full permit'' decisions, by contrast, would not become effective until after a minimum period of 30 days during which a person may file an appeal under 43 CFR part 4.

In this further proposed rule, BLM invites public comment on the new minimum impact permit provisions, as well as on several other provisions that did not appear in the original proposed rule or have been substantially revised since that rule was published in 1990. These provisions concern rental and fee schedules for commercial filming and photography, hazardous materials, outdoor advertising, criminal penalties, and conformity of applications to land use planning. Finally, BLM requests suggestions and comments from the public on 5 specific issues relating to permits and rental schedules.

DATES: Comments on this further proposed rule must be submitted by April 10, 1995. No comments postmarked after this date will be considered in preparation of the final rule, nor will any additional comments be accepted on the original proposed rule published in 1990. The Department will consider all timely comments submitted on the further proposed rule, as well as the comments received in 1990–91 on the original proposed rule, in preparing the final rule.

ADDRESSES: Comments should be sent to: Director (140), Bureau of Land Management, Room 5555, Main Interior Bldg., 1849 C Street NW., Washington, DC 20240. Comments on the further proposed rule will be available for public review in Room 5555 of the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Jim Paugh, (307) 775–6306, or Ray Brady, (202) 452–7780.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. The Existing Regulations

The existing regulations in 43 CFR part 2920 establish the procedures for obtaining land use authorizations from the BLM in the form of permits, leases, and easements to use, occupy, and develop the public lands for activities not specifically covered by other authorizing regulations, such as grazing (43 CFR part 4100), recreation (43 CFR part 8300), and others. All land use authorizations in the existing regulations in part 2920 are now subject to the appeals process described in 43 CFR part 4, which includes a 30-day period in which a person adversely affected by BLM's decision may file a notice of appeal to the Interior Board of Land Appeals (IBLA). The land use authorization becomes effective at the end of the 30-day appeal period unless the appellant files a petition for a stay pending appeal. The IBLA has 45 days from the expiration of the 30-day appeal period to grant or deny the stay.

Under the existing regulations, the BLM may issue a type of permit called a ''minimum impact permit'' for activities that do not cause appreciable damage or disturbance to the public lands, their resources or improvements (43 CFR 2920.2–2). The BLM is not required to publish a Notice of Realty Action for minimum impact permits. Minimum impact permits are subject, however, to the 30-day appeal period before they can become effective. Examples of uses considered for minimum impact permits under the present regulations include apiary (bee hive) sites; temporary storage of hay, ranching and farming equipment, and dismantled drilling rigs; limited commercial filming and photography activities; special events and gatherings; and soil core sampling. The only written criteria to assist the BLM authorized officer in determining whether a particular use constitutes minimum impact are outlined in a BLM instruction memorandum, and currently apply only to commercial filming and photography.

B. The 1990 Proposed Rule

The original proposed rule published in the **Federal Register** on November 21, 1990, would substantially revise the existing regulations. It would eliminate the current ''easement'' category of land use authorizations, improve procedures for protecting public lands and resources from unauthorized use, and revise the procedures for administering, assigning, and terminating permits and leases. The original proposed rule would also dramatically change the existing appeals process for permits by making all permit decisions effective immediately upon signature by the authorized officer. The 30-day waiting period under 43 CFR 4.21 would not apply. The sole administrative review of a permit decision is provided in § 2924.1–1 in the original proposed rule. It allows parties adversely affected by an authorized officer's permit decision to request an administrative review by the authorized officer's immediate supervisor. No further administrative review is allowed in that rule. The 1990 proposed rule would not include a minimum impact permit category.

C. The Further Proposed Rule

This further proposed rule attempts to strike a balance between the permit appeals process under the existing regulations and that proposed in the 1990 rule. Under the current regulations, permit decisions do not become effective until after a minimum 30-day period in which an adversely affected person may file an appeal under 43 CFR 4.21(a) and 43 CFR 4.411(a). By contrast, the 1990 proposed rule would make all BLM permit decisions effective immediately.

This further proposed rule would create 2 categories of permits: ''minimum impact permits'' and ''full permits.'' Only minimum impact permit decisions would become effective immediately. The criteria for determining when BLM should issue a minimum impact permit or a full permit are outlined in the rule.

The structure of the original 1990 proposed rule has been somewhat reorganized, and that reorganization is

reflected in this further proposed rule. For example, § 2921.8 on appeals, in this rule, appeared with different wording as subpart 2924 in the 1990 proposed rule. Subpart 2923 of the original proposed rule, regarding the administration of permits and leases, has been redesignated as subpart 2924. Section 2924.1–2 would be added to that subpart in this further proposed rule to introduce the proposed rental fee schedule for commercial filming and photography. Because that section number (2924.1–2) was contained in the original proposed rule, the amendatory language in this further proposed rule states that the section is ''revised,'' but there is no connection between the original § 2924.1–2 on appeals and the new proposed § 2924.1–2 on fees, other than the section number itself. The reorganization of the original proposed rule does not affect any other section numbers in this further proposed rule. Other section number changes are only to accommodate the insertion of new sections.

Other subjects addressed in this further proposed rule are discussed in detail in the section-by-section analysis below. No provisions of 43 CFR part 9230 concerning trespass, which BLM proposed to amend in the original proposed rule, would be affected by this further proposed rule.

D. Commercial Filming on Public Lands

On September 13, 1993, the BLM met with representatives from the U.S. Forest Service, National Park Service, filming and photography industry, and environmental organizations to discuss filming on public lands. The film industry representatives urged BLM to adopt an expedited permit authorization process. Environmental group representatives favored written standards to ensure that an accelerated permit process would be carried out in a manner that would protect the public lands and their resources.

This further proposed rule establishes criteria for minimum impact permits intended to meet concerns of the film industry as well as environmental groups. These criteria would apply to all uses of public lands for which permits may be granted under part 2920, not just filming. The minutes of the September 1993 meeting are available for public review at each BLM State Office or may be obtained by contacting the Director (260), Bureau of Land Management, 1849 C Street, NW., Mail Stop 1000 LS, Washington, DC 20240.

II. Section-by-Section Analysis

Section 2920.0–5 Definitions

This further proposed rule would introduce some important definitions, including ''full permit'' and ''minimum impact permit.'' These two terms are essential to an understanding of this further proposed rule, and are explained fully in the discussion of § 2921.7, below. Also added are definitions of ''location'' and ''staging area'' as they pertain to the film industry, a definition of ''wetlands'' (the presence of wetlands is a threshold criterion for requiring a full permit), and a definition of ''hazardous material.'' Finally, the further proposed rule would revise the definition of ''casual use'' that appeared in the 1990 proposed rule. The new definition would emphasize the noncommercial and occasional nature of the activities that constitute casual use.

Section 2921.3 Prohibited Acts

This section of the 1990 proposed rule has been amended by adding a new paragraph (e) containing a list of prohibited acts in addition to the acts listed in other paragraphs of the section that constitute trespass. These new prohibited acts include failure to comply with terms and conditions imposed under the regulations, failure to comply with permit or lease stipulations required by the authorized officer, transfer of a lease to another party without approval by the authorized officer, use of a permit or lease after the expiration date or for purposes other than those specified in the permit, failure to comply with any BLM notice or temporary suspension order, failure to make any required payments, failure to comply with reclamation requirements, and subleasing. Also added are prohibited acts related to hazardous materials and the disposal of solid wastes. To accommodate this addition, the proposed paragraph (e) would be redesignated as (f), the original paragraph (f) becomes § 2921.4—Penalties, which would be revised as discussed below, and the original § 2921.4 becomes § 2921.5.

Section 2921.4 Penalties

This section would amend the original proposed rule to reflect amendments of the Sentencing Reform Act of 1984 that provide increased criminal penalties for violations of Federal law, including violations under section 303(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. 1733(a). The Criminal Fine Improvements Act of 1987 (Pub.L. 100–185, section 6, 101 Stat. 1279, 1280 (1987)) amends Title 18 of the United States Code (18 U.S.C. 3571) by increasing maximum fines for Class A misdemeanors under 18 U.S.C. 3559 (such as violations under section 303(a) of FLPMA) to $100,000 for individuals and $200,000 for organizations. Thus, this further proposed rule would make it clear that criminal penalties for violation of the regulations in part 2920 are not limited to the amounts specified in FLPMA.

Section 2921.6 Activities Requiring a Permit

This section would require all commercial users of the public lands, and noncommercial users whose activities exceed casual use, to apply for a permit. Casual use activities would not require a permit.

Paragraph (b) of § 2921.6 would specifically address permit requirements for professional still photographers and videotapers. Most professional and amateur photographers would be allowed to make still photographs and videos on public lands without permits or the payment of fees. Tourists and recreational photographers also are not required to obtain permits for taking pictures or making videos on public lands. Professional photographers taking pictures of public land users (such as those engaged in recreational activities) for the express purpose of selling the pictures to the land users would be required to obtain permits. Permits would also be required for photography performed under a sales contract (for example, a contract for photographs for postcards, calendars, or books), or photography using the public lands as a location or background for advertising commercial products. Finally, permits would be required for photography, if it is reasonably likely that public lands or resources, such as archaeological or historic artifacts or features, could be adversely affected. Permits are necessary in such cases as vehicles for enforceable conditions that would protect these resources.

Section 2921.7 Minimum Impact Permits and Full Permits

A new § 2921.7 would establish criteria to assist BLM in determining whether issuance of a minimum impact permit or a full permit would be appropriate for a proposed use of public lands. Minimum impact permits could be issued if the activity fit the definition in § 2920.0–5 and did not involve any of the conditions listed in § 2921.7(b) or (c). The BLM proposes to adopt these criteria for all types of land uses that are

considered for minimum impact permits under the existing regulations.

A prospective applicant would have the opportunity to discuss these criteria with the authorized officer during the pre-application phase of the permitting process described in § 2922.1 of the 1990 proposed rule. During this discussion, the authorized officer would also inform prospective applicants of other possible resource management conflicts, legal approvals required, and other interested or affected public land users or interest groups. This would assist prospective applicants at the outset to assess the likelihood of obtaining a minimum impact permit, and would enable them to locate other available land quickly for the proposed activity, rather than seek a full permit with its attendant delays.

Section 2921.8 Appeals

Section 2921.8 in this further proposed rule supersedes subpart 2924, concerning appeals, in the 1990 proposed rule. The further proposed rule provides that all minimum impact permit decisions of an authorized officer would be effective immediately unless a person adversely affected appeals and demonstrates to the Interior Board of Land Appeals (IBLA) that the action should be stayed pending appeal. The general provisions of 43 CFR 4.21(a) would not apply to a decision or approval of the authorized officer for any minimum impact permit, except that parties eligible to maintain an appeal under 43 CFR 4.21(a) would also be able to file a request for a stay of decision with the IBLA. The IBLA could grant a stay if the petitioner demonstrated sufficient justification.

Section 2921.9 Outdoor Advertising

This new provision is a cross-reference to regulations of the Department of Transportation on outdoor advertising.

Section 2922.2–1 Applications Not Conforming to Land Use Plans

Section 2922.2–1 has been added to make clear that applications are required to conform to BLM land use plans, and that any applications that do not conform to BLM plans must be modified or they will be rejected. Applications so rejected due to nonconformance with BLM land use plans are subject to appeal pursuant to 43 CFR part 4.

Section 2922.2–3 Application Content

This provision was suggested in public comments on the original proposed rule. Provisions restricting the use, storage, or production of hazardous materials on lands subject to permits or leases would be added as § 2922.2–4(m). Related amendments are proposed in §§ 2921.3 and 2922.2–3 to prohibit treatment and disposal of hazardous materials and certain solid wastes on public lands, and requiring applications for permit or lease to disclose whether hazardous materials would be involved in the activity.

Section 2924.1–2 Rental and Fee Schedules for Film and Photography Permits

Rental and fee schedules for commercial filming and photography would be added in a new § 2924.1–2. The schedules are intended to be reasonable and easy to implement, and have been developed in consultation with other land managing agencies of the Department of the Interior and with the Forest Service. The schedules do not include recovery of the costs of processing an application. Cost recovery provisions for permits and leases were included in the original proposed rule. The rental payments are intended to reflect fair market value of the use of public lands and their resources for a specified period. In developing the rental schedule, the BLM considered comments from industry and other Federal agencies, and interviews with private property owners who rent land to film production companies. Private property owners take into account the nature of the activities to be conducted on their land, the number of people, and the duration of the use.

III. Request for Comments

To assist the public in the development of comment on this further proposed rule, copies of the original November 21, 1990, proposed rule (55 FR 48810) may be obtained by request to the office identified in **ADDRESSES**, above. However, the substance of this further proposed rule may be understood without reference to the 1990 proposed rule.

In addition to inviting comments on this further proposed rule, the BLM specifically requests responses to the following questions related to leases and permits:

1. Under the existing regulations, all permits and leases are subject to a 30-day appeal period before they become effective. The 1990 proposed rule would make all leases and permits effective immediately upon issuance by the BLM authorized officer. Under the current proposal, only minimum impact permits would be effective immediately; leases and other permits would remain subject to the 30-day waiting period prescribed in 43 CFR part 4. Which approach do you think is appropriate?

2. Should the BLM issue minimum impact permits for all types of activities authorized under 43 CFR part 2920 or only for filming or photography?

3. Are the standards set forth in § 2921.7 appropriate and sufficient for determining whether a proposed activity should require a full permit or a minimum impact permit?

4. Is the U.S. Department of Labor Consumer Price Index for All Urban Consumers (CPI–U), U.S. City Average an appropriate index for adjusting rental schedules in future years?

5. Should free-lance professional still photography be considered a casual use activity that is exempt from the permit requirements, except in those situations listed in § 2921.6(b) of the further proposed rule, or should free-lance professional still photographers be required to obtain a permit in all cases and pay appropriate fees?

The principal authors of this further proposed rule are Jim Paugh, Wyoming State Office, David Cavanaugh, Chief Appraiser, and Ray Brady, Chief, Division of Lands, assisted by the staff of the Division of Legislation and Regulatory Management, Bureau of Land Management, and the Office of the Solicitor, Department of the Interior.

We have determined that this further proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment. The BLM has prepared an environmental assessment of the impacts of the rule and has determined that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required. The rule would merely simplify and streamline procedures for permit issuance. Each application for a permit or lease is, and under this rule would remain, subject to environmental analysis and, if determined necessary, an environmental impact statement.

This rule was not subject to review by the Office of Management and Budget under Executive Order 12866.

The Department has determined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that the rule will not have a significant economic impact on a substantial number of small entities. The rule favors no demographic group. The fee schedule imposed by the rule is graduated according to the size of the permittee, so that larger entities with more personnel and equipment using the public lands would pay larger fees. The costs would be minimized for those small entities that would cause less damage to the public lands being used

and less interference with other uses and users.

Because the rule will result in no taking of private property and no impairment of property rights, the Department certifies that this rule does not represent a governmental action capable of interference with constitutionally protected property rights, as required by Executive Order 12630.

The Department has certified to the Office of Management and Budget that these regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778.

The information collection requirement(s) contained in part 2920 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1004–0009.

List of Subjects for 43 CFR Part 2920

Public lands, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, and under the authority of 43 U.S.C. 1740, the proposed rule published at 55 FR 48810, November 21, 1990, which would amend part 2920, group 2900, subchapter B, chapter II, Subtitle B, Title 43 of the Code of Federal Regulations, is proposed to be amended as follows:

PART 2920—PERMITS AND LEASES, PRINCIPLES AND PROCEDURES

1. The authority citation for part 2920 is revised to read as follows:

Authority: 43 U.S.C. 1740.

2. Section 2920.0–5 in the proposed rule is further amended by adding in alphabetical order definitions to read as follows:

§ 2920.0–5 Definitions.

* * * * *

Full permit means an authorization for an activity that would result in more than minimal impacts on public lands, or their resources or improvements, as measured by the criteria set forth in § 2921.7, or for which reclamation or restoration requires more than minimal effort.

Hazardous material means any substance that is listed as hazardous, toxic, or dangerous, or defined as nuclear or byproduct material, under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9601 *et seq.*, the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6901 *et seq.*, the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 *et seq.*, or the regulations issued under those laws. The term does not include petroleum, including crude oil or any fraction thereof, unless the substance is specifically listed or designated as a hazardous substance under 42 U.S.C. 9601(14), nor does it include natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas).

Location means each place on public lands used for film production purposes.

Minimum impact permit means an authorization for an activity that would likely result in little or no damage to public lands, or their resources or improvements, as measured by the criteria set forth in § 2921.7, and which damaged resources can be easily reclaimed or restored.

Staging area means each place on public lands used for parking, catering, and off-set construction associated with film production.

Wetlands means areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support and which, under normal circumstances, do support a prevalence of vegetation typically adapted for life in saturated soil conditions.

* * * * *

3. Section 2920.0–5 in the proposed rule is further amended by revising the definition of ''casual use'' to read as follows:

§ 2920.0–5 Definitions.

* * * * *

Casual use means noncommercial activities occurring on an occasional or irregular basis that ordinarily result in negligible disturbance of public lands, or their resources or improvements, and require no reclamation or restoration.

4. Section 2921.2 in the proposed rule is further amended by adding paragraph (c) to read as follows:

§ 2921.2 Terms and conditions.

* * * * *

(c)(1) The lessee or permittee must furnish to the authorized officer a copy of any report required or requested by any Federal, State, or local government agency regarding any release of hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9601 *et seq.* (CERCLA) in excess of the reportable quantity established by 40 CFR part 117.

(2) The lessee or permittee must report any release of a hazardous substance as defined in CERCLA in excess of the reportable quantity established by 40 CFR part 117, or any oil spill, as required under CERCLA and the National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR part 300), and must send copies of such reports to the authorized officer within 5 days.

(3) The lessee or permittee must notify the authorized officer within 5 days if there is a significant variation from the authorized use with respect to hazardous materials and their use, generation, or storage.

5. Section 2921.4 of the proposed rule is redesignated as section 2921.5.

6. Section 2921.3 of the proposed rule is further amended by redesignating paragraph (f) as section 2921.4, redesignating paragraph (e) as paragraph (f), and adding paragraph (e) to read as follows:

§ 2921.3 Prohibited acts.

* * * * *

(e) Additional prohibited acts not related to trespass include but are not limited to:

(1) Failure to comply with any of the terms and conditions imposed under § 2921.2 of this part;

(2) Failure to comply with any permit or lease stipulations required by the authorized officer;

(3) Transfer of a lease to another party prior to written approval by the authorized officer;

(4) Use of a permit after the expiration date or for purposes other than those specified in the permit;

(5) Use of a lease after the expiration date or for purposes other than those specified in the lease without the written approval of the authorized officer;

(6) Failure to comply with any Bureau of Land Management notice or temporary suspension order;

(7) Failure to pay any required fee or payment;

(8) Failure to comply with requirements for restoration, revegetation, and curtailment of erosion of the land surface, or any other reclamation measure determined necessary by the authorized officer.

(9) Subleasing lands leased under this part.

(10) Treatment or disposal of hazardous materials on leased or permitted lands.

(11) Disposal of solid wastes as defined in the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6901 *et seq.*, and the regulations issued under that Act.

* * * * *

7. Section 2921.3(f) of the original proposed rule is redesignated as section 2921.4 and revised to read as follows:

§ 2921.4 Penalties.

(a) In addition to the civilly enforceable penalties listed in this part, any person who knowingly and willfully violates any regulation in § 2921.3 may be tried before a designated United States magistrate and fined in accordance with Title 18 of the United States Code, or imprisoned for no more than 12 months, as provided by Section 303(a) of the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1733(a)), or both. Under the Sentencing Reform Act of 1984, as amended by the Criminal Fine Improvements Act of 1987, (18 U.S.C. 3571), an individual who has been found guilty of an offense under this part may be fined not more than $100,000, and an organization that has been found guilty of an offense under this part may be fined not more than $200,000.

(b) In addition to the criminal penalties for offenses under section 303(a) of the Federal Land Policy and Management Act, any person who willfully injures any property of the United States, or of any department or agency of the United States, may be punished in accordance with 18 U.S.C. 1361, as follows: If the property damage exceeds the sum of $100, by a fine of not more than $10,000 or imprisonment for not more than ten years, or both. Under 18 U.S.C. 3559(a)(4), an offense under 18 U.S.C. 1361 is classified as a Class D felony. An individual who has been found guilty of a Class D felony may be fined not more than $250,000, and an organization may be fined not more than $500,000, under the Criminal Fine Improvements Act of 1987 (18 U.S.C. 3571).

8. Section 2921.6 is added to the original proposed rule to read as follows:

§ 2921.6 Activities requiring a permit.

(a) *General.* All commercial activities require a permit, unless they require a lease under § 2921.1(b). Noncommercial activities may require a permit or lease if the authorized officer determines that they are likely to result in more than casual use. Casual use activities do not require a permit or lease.

(b) *Still photography, or camcorders and other videotaping.* A permit is required for professional still photography, or the professional use of camcorders or other videotaping equipment, on public lands only under the following circumstances:

(1) If photographs or videos of public land users will be made with the express purpose of selling the photographs or videos to those same users;

(2) If photographs or videos are made under an existing contract to sell them;

(3) If photographs or videos of commercial products are made on public lands for advertising purposes; or

(4) If the photography or videotaping is reasonably likely to affect adversely the public lands or their resources.

6. Section 2921.7 is added to the original proposed rule to read as follows:

§ 2921.7 Minimum impact permits and full permits.

(a) In response to a permit application, the authorized officer may issue a minimum impact permit or a full permit based on the criteria in paragraphs (b) and (c) of this section, or based on the criteria in a validly adopted decision document referred to in paragraph (d)(1) of this section. Any permit application for an activity as to which the authorized officer determines that the criteria in paragraphs (b) and (c) of this section do not apply will be considered for a minimum impact permit.

(b) The authorized officer will not issue a minimum impact permit, but will consider issuing a full permit, when any of the following conditions apply:

(1) Any crucial or critical wildlife habitat (recognizing seasonal variations), or sensitive, threatened, or endangered species, may be affected.

(2) There is a reasonable likelihood that a Native American sacred site would be affected.

(3) There is a major use of pyrotechnics.

(4) There is a reasonable likelihood of more than minimal impact on soil, air, or water.

(5) Explosives will be used.

(6) Heavy equipment will be used in a manner likely to cause environmental damage.

(7) There is danger of introduction of exotic species into the area.

(8) There may be disturbance of resource values, including, but not limited to, any of the following:

(i) Historical, cultural, or paleontological sites;

(ii) Sensitive soils;

(iii) Relict environments, those surviving from an earlier period in a particular area;

(iv) Wetlands or riparian areas; or

(v) Areas of Critical Environmental Concern designated under § 1610.7–2 of this title;

(c) The authorized officer will not issue a minimum impact permit, but will consider issuing a full permit, if the activity meets the conditions of both paragraphs (c)(1) and (c)(2) of this section, as follows:

(1) The activity is located in any of the following:

(i) BLM-designated Wilderness Study Areas.

(ii) Areas proposed for wilderness designation in legislation currently in Congress;

(iii) Wild and Scenic River corridors;

(iv) Areas or sites on the National Register of Historic Places;

(v) Other sensitive areas as determined by the authorized officer; and

(2) One or more of the following activities will occur in the permit area:

(i) Vehicles will be used, except on roads that are mechanically constructed;

(ii) Facilities or film sets will be constructed;

(iii) There will be significant restriction of public access;

(iv) There will be significant use of domestic livestock;

(v) Aircraft will be used;

(vi) Fifteen (15) or more vehicles will be used;

(vii) Seventy five (75) or more people will be present at any one time; or

(viii) The activity will continue for more than 10 days.

(d)(1) The provisions of paragraphs (b) and (c) of this section do not apply if:

(i) The Bureau of Land Management has established criteria for minimum impact permits in a validly adopted decision document covering the proposed activity and the specific public lands that are the subject of the permit application;

(ii) The decision document was signed before (*30 days after publication of the final rule*); and

(iii) The decision document's rationale and supporting environmental analysis are valid at the time the permit is issued.

(2) If all of the requirements listed in paragraph (d)(1) of this section are met, the authorized officer will apply the minimum impact permit criteria established in the decision document to determine whether a minimum impact permit or a full permit is appropriate for the proposed activity.

(3) If, after (*30 days after publication of the final rule*), the Bureau of Land Management prepares or amends a decision document covering the activities and public lands that are the subject of a permit application, the authorized officer will apply the criteria in paragraphs (b) and (c) of this section to determine whether a minimum impact permit or a full permit is appropriate.

9. Section 2921.8 is added to the original proposed rule to read as follows:

§ 2921.8 Appeals.

(a) *Minimum impact permits.* All minimum impact permit decisions of the authorized officer will be effective immediately upon signature by the authorized officer and will remain effective during the pendency of an appeal unless the Interior Board of Land Appeals (IBLA) or the authorized officer determines that the decision should be stayed as provided in this paragraph. The provisions of § 4.21(a) of this title do not apply to any decision or approval of the authorized officer on a minimum impact permit under this part, except that a party who may properly maintain an appeal under 43 CFR 4.21(a) of this title may file a petition for a stay together with a timely notice of appeal. A petition for a stay of a decision or approval of the authorized officer must be filed with IBLA showing sufficient justification under the standards set forth in § 4.21(b) of this title. Nothing in this paragraph diminishes the discretionary authority of the authorized officer to stay a decision subject to appeal upon a request by an adversely affected party or on the authorized officer's own initiative.

(b) *Full permits and leases.* All decisions of the authorized officer approving or denying a full permit and all decisions approving or denying a lease will be subject to the appeal provisions in part 4 of this title.

10. Section 2921.9 is added to the proposed rule to read as follows:

§ 2921.9 Outdoor advertising.

Permits or leases for the erection and maintenance of outdoor advertising signs, displays, and devices adjacent to Interstate Highways will be issued pursuant to the requirements of 23 U.S.C. 131 and the regulations at 23 CFR part 750.

10a. Section 2922.2–2 of the original proposed rule is redesignated as § 2922.2–3.

11. Section 2922.2–1 of the original proposed rule is redesignated as section 2922.2–2, and new section 2922.2–1 is added to the original proposed rule to read as follows:

§ 2922.2–1 Applications not conforming with land use plans.

An application for a permit or lease will be rejected if the proposed use does not conform with Bureau of Land Management land use plans, as provided in § 1610.5–3(a) of this title. If the proposed use does not conform with Bureau of Land Management land use plans, the authorized officer will reject the application and explain in writing why the proposal will not be approved. Rejected applications are subject to appeal pursuant to part 4 of this title.

12. Newly redesignated section 2922.2–3 is amended by revising paragraph (a), redesignating paragraphs (b) through (e) as paragraphs (c) through (f), respectively, and adding paragraph (b), to read as follows:

§ 2922.2–3 Application content.

(a) *General.* Applications for a permit or lease must include sufficient detail to enable the authorized officer to evaluate the feasibility of the proposed land use and determine whether the proposed use is in accordance with Bureau of Land Management plans, programs, and policies for the affected public lands. Applicants must disclose whether hazardous materials are to be used, stored, transported, or generated on the subject lands.

(b) *Commercial filming/photography permits.* Persons wishing to obtain a permit for motion picture filming or commercial still or video photography on public lands must submit an application containing the name, address, and telephone number of the applicant, the name of the applicant's agent, if any, and the following information:

(1) *Type of use.* (i) The application must state whether the use of the public lands will be for a commercial production, a nonprofit production, a community service production, or an educational production.

(ii) The application must state whether the use of the public lands will be for a feature film, an advertisement, a documentary, a still photograph, a video, or for some other purpose.

(2) *Duration of use.* The application must state the number of days that filming and related activities will continue on the land that is the subject of the permit.

(3) *Number of people.* The application must state the number of personnel to be involved in the filming activity subject to the permit.

(4) *Number and type of vehicles.* The application must state the number and type of vehicles to be used in the filming activity subject to the permit.

(5) *Staging areas.* The application must state the number and location of staging areas on public lands subject to the permit.

(6) *Other activities.* The application must state whether other activities are involved, including but not limited to:

(i) Temporary road closures;

(ii) Special effects or pyrotechnics;

(iii) Construction of sets;

(iv) Use of animals;

(v) Use of aircraft; or

(vi) Catering.

* * * * *

13. Section 2922.3 in the proposed rule is redesignated as section 2922.2–4 and further amended by adding paragraph (m) to read as follows:

§ 2922.2–4 Application processing.

* * * * *

(m) The authorized officer may allow the use, storage, and generation of hazardous materials in connection with the lessee's or permittee's use or occupancy of the public lands pursuant to this part only if consistent with applicable Federal, State, and local laws and regulations.

13. Section 2924.1–2 of the proposed rule is revised to read as follows:

§ 2924.1–2 Rental and fee schedule for film and photography permits.

(a) *Motion picture and video filming.* (1) Upon being issued either a minimum impact or full permit for commercial motion picture or video filming under § 2921.7, the permittee must pay a rental according to the following schedule:

MOTION PICTURE AND VIDEO FILMING RENTAL SCHEDULE

Number of people	Daily rate for each location	Daily rate for each staging area
1–10	$150	$75
11–30	250	125
31–60	450	225
61–100	600	300
101+	600 (or as determined by appraisal).	300 (or as determined by appraisal).

Note: The number of people includes actors, models, and filming and support crew. If the number of people exceeds 100, the authorized officer may order an appraisal to determine fair market value. Absent such an appraisal, the maximum daily rental is $600 for each location and $300 for each staging area for numbers of people exceeding 100.

(i) Total rent is calculated by adding the rate for each day authorized. The rent may vary from day to day depending on the number of people who are present and the number of locations and staging areas used. Permit applications must include a daily estimate of the number of people planned to be on location.

(ii) The permittee must pay rental for days in excess of 20 days at a rate of 85 percent of the daily rent per day, plus any additions required under paragraph (a)(2) of this section.

(2) In addition to the rental requirements of paragraph (a)(1) of this section, the permittee must pay daily fees, based on the type and amount of special treatment required, area used, or

activity undertaken, according to the following schedule:

RENTAL FEE ADDITIONS

Activity	Daily fee
Traffic control (road closures, detours, etc.)	$150
Authorized use of Congressional or agency identified protected areas listed in § 2921.7(c)(1)	150
Authorized surface disturbances (grading, removal of rocks or vegetation, use of heavy earthmoving equipment or animals)	100
Special effects (crashes, large pyrotechnics, fire scenes, etc.)	100

(3) The proposed rental schedule will be updated annually based on the U.S. Department of Labor Consumer Price Index for All Urban Consumers (CPI–U), U.S. City Average published in July of each year.

(b) *Commercial still photography.* (1) Upon being issued a commercial still photography permit under § 2921.6(b), the permittee must pay a rental according to the following schedule:

COMMERCIAL STILL PHOTOGRAPHY RENTAL SCHEDULE

Number of people	Daily rate
1–3	No charge.
4–10	$100
11–30	150
31–49	250
50–100	300
101+	300 (or as determined by appraisal).

Note: The number of people includes actors, models, and photography and support crew. If the number of people exceeds 100, the authorized officer may order an appraisal to determine fair market value. Absent such an appraisal, the maximum daily rental is $300 for numbers of people exceeding 100.

(i) Total rent must be calculated by adding the rate for each day authorized. The rent may vary from day to day depending on the number of people who are present. Permit applications must include a daily estimate of the number of people planned to be on location.

(ii) Daily rent must be paid for each authorized location.

(2) The proposed rental schedule will be updated annually based on the U.S. Department of Labor Consumer Price Index for All Urban Consumers (CPI–U), U.S. City Average.

Dated: January 12, 1995.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 95–3305 Filed 2–8–95; 8:45 am]

BILLING CODE 4310–84–P

Reader Aids

Federal Register

Vol. 60, No. 27

Thursday, February 9, 1995

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	**202–523–5227**
Public inspection announcement line	**523–5215**
Corrections to published documents	**523–5237**
Document drafting information	**523–3187**
Machine readable documents	**523–4534**

Code of Federal Regulations

Index, finding aids & general information	**523–5227**
Printing schedules	**523–3419**

Laws

Public Laws Update Service (numbers, dates, etc.)	**523–6641**
Additional information	**523–5230**

Presidential Documents

Executive orders and proclamations	**523–5230**
Public Papers of the Presidents	**523–5230**
Weekly Compilation of Presidential Documents	**523–5230**

The United States Government Manual

General information	**523–5230**

Other Services

Data base and machine readable specifications	**523–4534**
Guide to Record Retention Requirements	**523–3187**
Legal staff	**523–4534**
Privacy Act Compilation	**523–3187**
Public Laws Update Service (PLUS)	**523–6641**
TDD for the hearing impaired	**523–5229**

ELECTRONIC BULLETIN BOARD

Free **Electronic Bulletin Board** service for Public Law numbers, Federal Register finding aids, and list of documents on public inspection. **202–275–0920**

FAX-ON-DEMAND

You may access our Fax-On-Demand service. You only need a fax machine and there is no charge for the service except for long distance telephone charges the user may incur. The list of documents on public inspection and the daily Federal Register's table of contents are available using this service. The document numbers are 7050-Public Inspection list and 7051-Table of Contents list. The public inspection list will be updated immediately for documents filed on an emergency basis.
NOTE: YOU WILL ONLY GET A LISTING OF DOCUMENTS ON FILE AND NOT THE ACTUAL DOCUMENT. Documents on public inspection may be viewed and copied in our office located at 800 North Capitol Street, N.W., Suite 700. The Fax-On-Demand telephone number is: **301–713–6905**

FEDERAL REGISTER PAGES AND DATES, FEBRUARY

5997–6382.....1
6383–6646.....2
6647–6944.....3
6945–7110.....6
7111–7428.....7
7429–7696.....8
7697–7884.....9

CFR PARTS AFFECTED DURING FEBRUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Executive Orders:
12898 (Amended by EO 12948).....6381
12948.....6381
Proclamations:
6767.....7427

5 CFR

211.....6595
214.....6383
317.....6383
319.....6383
353.....6595
359.....6383
430.....6595
534.....6383
2635.....6390
Proposed Rules:
532.....6041

7 CFR

25.....6945
29.....7429
70.....6638
300.....6957
319.....5997, 6957
322.....5997
372.....6000
729.....7429
920.....7430
985.....6392
997.....6394
1005.....7432
1007.....7432
1011.....7432
1046.....7432
1050.....7434
1212.....7435
1435.....7697
Proposed Rules:
29.....6452, 6453
1001.....6606, 7290
1002.....6606, 7290
1004.....6606, 7290
1005.....6606, 7290
1006.....6606, 7290
1007.....6606, 7290
1011.....6396, 6606, 7290
1012.....6606, 7290
1013.....6606, 7290
1030.....6606, 7290
1032.....6005, 6606, 7290
1033.....6606, 7290
1036.....6606, 7290
1040.....6606, 7290
1044.....6606, 7290
1046.....6606, 7290
1049.....6606, 7290
1050.....6606, 7290
1064.....6606, 7290
1065.....6606, 7290
1068.....6606, 7290
1075.....6606, 7290
1076.....6606, 7290
1079.....6606, 7290
1093.....6606, 7290
1094.....6606, 7290
1096.....6606, 7290
1099.....7290
1106.....6606, 7290
1108.....6606, 7290
1124.....6606, 7290
1126.....6606, 7290, 7465
1131.....6606, 7290, 7466
1134.....6606, 7290
1135.....6606, 7290
1137.....6606, 7290
1138.....6606, 7290
1139.....6606, 7290
1485.....6352

8 CFR

103.....6647
292.....6647
299.....6647
310.....6647
312.....6647
313.....6647
315.....6647
316.....6647
316a.....6647
319.....6647
322.....6647
324.....6647
325.....6647
327.....6647
328.....6647
329.....6647
330.....6647
331.....6647
332.....6647
332a.....6647
332b.....6647
332c.....6647
332d.....6647
333.....6647
334.....6647
334a.....6647
335.....6647
335a.....6647
335c.....6647
336.....6647
337.....6647
338.....6647
339.....6647
340.....6647
343b.....6647
344.....6647
499.....6647

9 CFR

Proposed Rules:
92.....7137